

# NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

## NOTICE OF FINAL RULEMAKING

### TITLE 9. HEALTH SERVICES

#### CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

[R06-442]

#### PREAMBLE

- 1. Sections Affected**

	<u>Rulemaking Action</u>
R9-22-109	Repeal
Article 9	Repeal
R9-22-901	Repeal
R9-22-902	Repeal
R9-22-903	Repeal
R9-22-904	Repeal
R9-22-905	Repeal
R9-22-906	Repeal
R9-22-907	Repeal
R9-22-908	Repeal
R9-22-909	Repeal
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 36-2903.01(F)  
Implementing statute: A.R.S. § 36-2903.01(B)(3)
- 3. The effective date of the rules:**

January 6, 2007
- 4. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 12 A.A.R. 2773, August 4, 2006  
Notice of Proposed Rulemaking: 12 A.A.R. 2877, August 18, 2006
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

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- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**

The rule provides current standards for processing and finding erroneous Medicaid payments due to errors made during a determination of eligibility as detected through the Medicaid Eligibility Quality Control (MEQC) program. These processes are required in an Intergovernmental Agreement (IGA) between AHCCCS and the Department of Economic Security (DES) and not in rule. The Administration believes these rules are subject to the exemption from the Administrative Procedure Act, A.R.S. § 41-1005(A)(15). Therefore, the MEQC-related rules are being repealed.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or**

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**justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The agency did not review or rely on any study.

**8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. The summary of the economic, small business, and consumer impact:**

The Administration is exempt, as described under A.R.S. § 41-1055(D)(3), from assessing the economic, small business, consumer impact since the rulemaking repeals rules regarding processes that are addressed in an IGA between the Department of Economic Security and the Administration and not necessary in rule.

Therefore, the rulemaking decreases reporting and recordkeeping burdens concerning these repealed rules.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

There were not any significant changes from the language proposed to the language finalized. Minor technical and grammatical changes were made at the suggestion of G.R.R.C. staff.

The Administration made the rules more clear, concise, and understandable by making grammatical, verb tense, punctuation, and structural changes throughout the rules.

**11. A summary of the comments made regarding the rule and the agency response to them:**

None were received.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

**13. Incorporations by reference and their location in the rules:**

None

**14. Was this rule previously adopted as an emergency rule?**

No

**15. The full text of the rules follows:**

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
ADMINISTRATION

ARTICLE 1. DEFINITIONS

Section

R9-22-109. ~~Quality Control Related Definitions~~ Repealed

ARTICLE 9. ~~QUALITY CONTROL~~ Repealed

Section

R9-22-901. ~~General Information~~ Repealed  
R9-22-902. ~~Pre-Determination Quality Control (PDQC)~~ Repealed  
R9-22-903. ~~Random Sample~~ Repealed  
R9-22-904. ~~Targeted Sample~~ Repealed  
R9-22-905. ~~Negative Case Action Sample~~ Repealed  
R9-22-906. ~~Management Evaluation Review~~ Repealed  
R9-22-907. ~~Challenge of Findings~~ Repealed  
R9-22-908. ~~Corrective Action Plans~~ Repealed  
R9-22-909. ~~Annual Assessment Period Report~~ Repealed

ARTICLE 1. DEFINITIONS

**R9-22-109. ~~Quality Control Related Definitions~~ Repealed**

~~“Active case” means an individual or family case determined eligible for AHCCCS medical coverage.~~

~~“Annual assessment period” means the 12 month period, October 1 through September 30, and includes two six month~~

sample periods (October through March and April through September).

“Annual assessment period report” means the Administration’s report containing the annual error rates for the Random Sample, Target Sample, and Negative Case Action Sample.

“Case” means an individual or family determined eligible or ineligible for AHCCCS medical coverage.

“Case record” means an individual or family file retained by the Department which contains all pertinent eligibility information, including electronically stored data.

“Case review” means the Administration’s evaluation of an individual’s or family’s circumstances and case record in a review month to determine if an individual or family is eligible based on the actual circumstances verified for the action taken in a review month for AHCCCS.

“Corrective action plan” means a effective plan developed by the Department to reduce the Department’s error rate when an error rate exceeds a tolerance level.

“District” means the Department’s management unit based on geographical location that administers the eligibility programs.

“Error” means a review finding in which one or more members is found to be factually ineligible, approved for a program with more services under Title XIX than an applicant or member is entitled to, or discontinued or denied when a member is factually eligible in a review month. An error may include misclassification resulting in additional expenses or liability to the Administration or loss of AHCCCS medical coverage for the applicant or member.

“Finding” means a result based on the Administration’s review.

“Management evaluation review” means the process by which the Administration determines whether the Department meets specific performance measures.

“Notice of Findings” means a report provided to the Department by the Administration when a review is completed.

“Performance measures” means the methods by which the Administration determines the extent to which the Department meets the pre-determined standards and goals.

“Preponderance of evidence” means the greater weight of evidence.

“Random sample” means a representative population with each case having an equal chance of being chosen, having no specific pattern, purpose, organization, or structure other than as defined by case characteristic.

“Review period” means the April through September and October through March time periods that the Administration selects and completes a review of case records.

“Summary report” means the Administration’s report issued at the end of each six month review period summarizing all review findings including eligibility errors, technical errors, administrative deficiencies, and corrective action requirements.

“Tolerance level” means the percentage of errors which the Administration accepts.

#### ARTICLE 9. ~~QUALITY CONTROL~~ Repealed

##### **R9-22-901. ~~General Information~~ Repealed**

- A.** This Article defines the responsibilities, structure, and requirements of the Medicaid Eligibility Quality Control program (MEQC) which are further delineated in the Intergovernmental Agreement (IGA) under A.R.S. § 36-2903.01 between the Administration and the Department.
- B.** The Administration conducts MEQC activities to:
  - 1. Determine the Department’s compliance with the IGA;
  - 2. Prevent or detect an eligibility error, and
  - 3. Determine compliance with performance measures.
- C.** The Administration shall select cases, under Sections R9-22-903 through R9-22-905, for review on a monthly basis from eligibility determinations made in the previous month within each six-month review period. Each six-month review period sample will be statistically valid at 95 percent confidence level on a statewide or district basis in accordance with AHCCCS’ Quality Control Redesign Pilot as approved by CMS.

##### **R9-22-902. ~~Pre-Determination Quality Control (PDQC)~~ Repealed**

- A.** The Department shall screen Title XIX applications, provide PDQC referrals to the Administration, and comply with the PDQC requirements.
- B.** The Administration may conduct a case review prior to a determination of eligibility in order to avoid an error and prevent fraud.
- C.** The Department shall compare the Administration’s review findings with information received during and after an interview under Article 14 and with previous applications to determine whether or not an individual or family is eligible based on a preponderance of evidence.

##### **R9-22-903. ~~Random Sample~~ Repealed**

- A.** The Administration shall select a case from a statistically valid random sample of all cases approved or active for Title XIX during a review period, conduct a case review, and issue a Notice of Finding to the Department.
- B.** The Administration may stratify cases by district.

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**R9-22-904. Targeted Sample Repealed**

- A.** The Administration may conduct a targeted case review based on specific criteria and issue a Notice of Finding to the Department.
- B.** The Administration shall select a sample for a targeted review either on a random basis or on an individual case basis. The criteria may be by case characteristics, individual office or district, or other criteria determined by the Administration.

**R9-22-905. Negative Case Action Sample Repealed**

- A.** The Administration shall select a case from a statistically valid random sample of all cases denied or discontinued from Title XIX during a review period, conduct a case review, and issue a Notice of Finding to the Department.
- B.** The Administration may stratify cases by district.

**R9-22-906. Management Evaluation Review Repealed**

- A.** The Administration shall perform a Management Evaluation Review of the Department under A.R.S. § 36-2903.01 to determine whether the performance measures are being met and include any findings in the Summary Report to the Department. No less than 12 Department eligibility sites will be reviewed annually.
- B.** The Management Evaluation Reviews may include:
  - 1. Interviews with applicants, members and Department staff;
  - 2. Observation of local office practices;
  - 3. Reviews of notices sent to an applicant and a member;
  - 4. Reviews of pre-enrollment procedures;
  - 5. Other areas of the eligibility process for which the Department is responsible;
  - 6. The eligibility appeal process; or
  - 7. Interviews with department staff located in or staff employed by Federally Qualified Health Centers and Level One Trauma Centers to identify any barriers, including sufficient staffing, that delay the processing of applications.

**R9-22-907. Challenge of Findings Repealed**

- A.** Challenge Process:
  - 1. The Department may challenge the Administration's error finding under R9-22-903 through R9-22-905 by submitting a written challenge to the Administration. The Administration shall receive the challenge no later than 15 days from the date of the Notice of Finding. The date of the Notice of Finding is the date the Notice is mailed.
  - 2. The Department shall include evidence that refutes an error finding. The Department may include in its written challenge evidence obtained after the date of the Notice of Finding.
  - 3. The Administration's finding shall be final if the Department fails to submit a challenge under the time frame in subsection (A)(1).
- B.** Administration Decision:
  - 1. The Administration shall review, within 30 days of receipt, the Department's challenge of an error finding and either uphold or overturn a finding.
  - 2. The Administration shall overturn an error finding if a preponderance of the evidence establishes that the Department's decision was not an error.
  - 3. The Administration shall not consider a case an error in calculating the Department's error rate under R9-22-909(A) if the Administration overturns a finding.
  - 4. The Department may file a grievance under Article 8 concerning the Administration's decision.

**R9-22-908. Corrective Action Plans Repealed**

- A.** The Administration shall issue a Summary Report to the Department following the completion of each review period.
- B.** The Department shall prepare and implement a corrective action plan if the Summary Report identifies an error rate greater than the tolerance level either statewide or by district or the Department fails to meet the performance measures delineated in the IGA.
- C.** The Department shall prepare, submit, and implement an effective corrective action plan for the Administration's finding under R9-22-906 when an office does not meet a level of compliance.

**R9-22-909. Annual Assessment Period Report Repealed**

The Administration shall issue an Annual Assessment Period Report. This report shall:

- 1. Serve as notification to the Department of the annual error rate determined for the Random Sample, Targeted Sample and Negative Case Action Sample;
- 2. Compare the error rate with the tolerance level for each sample; and
- 3. Serve as notification to the Department of a disallowed error rate and applicable financial sanction under A.R.S. § 36-2903.01.

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TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)  
ADMINISTRATION

[R06-443]

PREAMBLE

**1. Sections Affected**

R9-22-120  
R9-22-2001  
R9-22-2001  
R9-22-2002  
R9-22-2002  
R9-22-2003  
R9-22-2004  
R9-22-2004  
R9-22-2005  
R9-22-2005  
R9-22-2006  
R9-22-2006  
R9-22-2007  
R9-22-2007  
R9-22-2008

**Rulemaking Action**

Repeal  
Repeal  
New Section  
Repeal  
New Section  
Amend  
Repeal  
New Section  
Repeal  
New Section  
Repeal  
New Section  
Repeal  
New Section  
New Section

**2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 36-2903.01(F)

Implementing statute: A.R.S. § 36-2901.05

**3. The effective date of the rules:**

January 6, 2007

**4. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 12 A.A.R. 2773, August 4, 2006

Notice of Proposed Rulemaking: 12 A.A.R. 2881, August 18, 2006

**5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

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**6. An explanation of the rule, including the agency's reasons for initiating the rule:**

As a result of reviewing the current rules, changes were found necessary to update the rule with the agency's current practice and to make the rules clearer.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The Administration did not review any study relevant to the rules.

**8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

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**9. The summary of the economic, small business, and consumer impact:**

The changes proposed are anticipated to have a minimal impact, since the changes represent current practice and do not affect or change processes of interested parties.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

There were not any significant changes from the language proposed to the language finalized. Minor technical and grammatical changes were made at the suggestion of G.R.R.C. staff.

The Administration made the rules more clear, concise, and understandable by making grammatical, verb tense, punctuation, and structural changes throughout the rules.

**11. A summary of the comments made regarding the rule and the agency response to them:**

None were received.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**13. Incorporations by reference and their location in the rules:**

None

**14. Was this rule previously adopted as an emergency rule?**

No

**15. The full text of the rules follows:**

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
ADMINISTRATION

ARTICLE 1. DEFINITIONS

Section

R9-22-120. ~~Breast and Cervical Cancer Treatment Program Related Definitions~~ Repealed

ARTICLE 20. BREAST AND CERVICAL CANCER TREATMENT PROGRAM

Section

R9-22-2001. ~~General Requirements~~ Breast and Cervical Cancer Treatment Program Related Definitions

R9-22-2002. ~~Treatment~~ General Requirements

R9-22-2003. Eligibility Criteria

R9-22-2004. ~~Title XIX Application Process~~ Treatment

R9-22-2005. ~~Approval, Denial, or Discontinuance of Eligibility~~ Application Process

R9-22-2006. ~~Effective Date of Eligibility~~ Approval, Denial, or Discontinuance of Eligibility

R9-22-2007. ~~Redetermination of Eligibility~~ Effective and End Date of Eligibility

R9-22-2008. Redetermination of Eligibility

ARTICLE 1. DEFINITIONS

**R9-22-120. ~~Breast and Cervical Cancer Treatment Program Related Definitions~~ Repealed**

In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meaning unless the context explicitly requires another meaning:

“Cryotherapy” means the destruction of abnormal tissue using an extremely cold temperature.

“LEEP” means the loop electrosurgical excision procedure that passes an electric current through a thin wire loop.

“Peer-reviewed study” means that, prior to publication, a medical study has been subjected to the review of medical experts who:

Have expertise in the subject matter of the study;

Evaluate the science and methodology of the study;

Are selected by the editorial staff of the publication, and

Review the study without knowledge of the identity or qualifications of the author.

“WWHP” means the Well Women Healthcheck Program administered by the Arizona Department of Health Services.

ARTICLE 20. BREAST AND CERVICAL CANCER TREATMENT PROGRAM

**R9-22-2001. General Requirements Breast and Cervical Cancer Treatment Program Related Definitions**

- A.** Confidentiality. The Administration and ADHS shall maintain the confidentiality of a woman's records and shall not disclose a woman's financial, medical, or other confidential information except as allowed under R9-22-512.
- B.** Covered services. A woman who is eligible under this Article receives all medically necessary services under Articles 2 and 12.
- C.** Choice of health plan. A woman who is eligible under this Article shall be enrolled with a contractor under Article 17.

In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meaning unless the context explicitly requires another meaning:

"AZ-NBCCEDP" means the Arizona programs of the National Breast and Cervical Cancer Early Detection Program. AZ-NBCCEDP provides breast and cervical cancer screening and diagnosis in Arizona.

"Cryotherapy" means the destruction of abnormal tissue using an extremely cold temperature.

"LEEP" means the loop electrosurgical excision procedure that passes an electric current through a thin wire loop.

"Peer-reviewed study" means that, prior to publication, a medical study has been subjected to the review of medical experts who:

Have expertise in the subject matter of the study,

Evaluate the science and methodology of the study,

Are selected by the editorial staff of the publication, and

Review the study without knowledge of the identity or qualifications of the author.

"WWHP" means the Well Women Healthcheck Program administered by the Arizona Department of Health Services. The WWHP is one of the programs within AZ-NBCCEDP that provides breast and cervical cancer screening and diagnosis.

**R9-22-2002. Treatment General Requirements**

- A.** Breast cancer. Treatment for breast cancer shall conclude 12 months after the last provider visit for specific treatment for the cancer or at the end of hormonal therapy for the cancer, whichever is later. Treatment includes any of the following:
  - 1. Lumpectomy or surgical removal of breast cancer;
  - 2. Chemotherapy;
  - 3. Radiation therapy; or
  - 4. A treatment that, as determined by the AHCCCS Chief Medical Officer, is considered the standard of care as supported by a peer-reviewed study published in a medical journal.
- B.** Pre-cancerous cervical lesion. Treatment for a pre-cancerous cervical lesion, including moderate or severe cervical dysplasia or carcinoma in situ, shall conclude four months after the last provider visit for specific treatment for the pre-cancerous lesion. Treatment includes any of the following:
  - 1. Conization;
  - 2. LEEP;
  - 3. Cryotherapy; or
  - 4. A treatment that, as determined by the AHCCCS Chief Medical Officer, is considered the standard of care as supported by a peer-reviewed study published in a medical journal.
- C.** Cervical cancer. Treatment for cervical cancer shall conclude 12 months after the last provider visit for specific treatment for the cancer. Treatment includes any of the following:
  - 1. Surgery;
  - 2. Radiation therapy;
  - 3. Chemotherapy;
  - 4. A treatment that, as determined by the AHCCCS Chief Medical Officer, is considered the standard of care as supported by a peer-reviewed study published in a medical journal.
- A.** Confidentiality. The Administration shall maintain the confidentiality of a woman's records and shall not disclose a woman's financial, medical, or other confidential information except as allowed under R9-22-512.
- B.** Covered services. A woman who is eligible under this Article receives all medically necessary services under Articles 2 and 12 of this Chapter.
- C.** Choice of health plan. A woman who is eligible under this Article shall be enrolled with a contractor under Article 17 of this Chapter.
- D.** A Native American woman who receives services through Indian Health Service (IHS) or through a tribal health program qualifies for services provided under this Article if all eligibility requirements are met.
- E.** A woman qualified under this Article shall pay co-pays as described in R9-22-711.

**R9-22-2003. Eligibility Criteria**

- A.** General. To be eligible for the Breast and Cervical Cancer Treatment Program under this Article, a woman shall meet the requirements of this Article and:
  - 1. Be screened for breast and cervical cancer through the WWHP on or after April 1, 2001;
  - 2. Be less than 65 years of age;
  - 3. Be ineligible for Title XIX under Articles 14 and 15;

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4. ~~Receive a positive screen under subsection (A)(1), a confirmed diagnosis by a WWHP physician, and need treatment for breast cancer, cervical cancer, or a pre-cancerous cervical lesion as specified in R9-22-2002;~~
  5. ~~Not be covered under creditable coverage as specified in Section 2701(c) of the Public Health Services Act (42 United States Code, Section 300gg(e)), January 5, 1999, which is incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments; and~~
  6. ~~Meet the requirements under R9-22-1416 through R9-22-1418.~~
- ~~**B.** Ineligible woman. A woman is ineligible for Breast and Cervical Cancer Treatment Program under this Article if the woman:~~
1. ~~Is an inmate of a public institution and federal financial participation (FFP) is not available;~~
  2. ~~Is age 21 through age 64 and resides in an Institution for Mental Disease as defined in R9-22-112, or~~
  3. ~~No longer meets an eligibility requirement under this Article.~~
- ~~**C.** Metastasized cancer. A woman's eligibility under this Article shall continue if a metastasized cancer is found in another part of the woman's body and that metastasized cancer is a known or presumed complication of the breast or cervical cancer.~~
- ~~**D.** Reoccurrence of cancer. A woman shall have eligibility reestablished after eligibility under this Article ends if the woman is screened under the WWHP program and additional breast or cervical cancer is found.~~
- ~~**E.** Ineligible male. A male is precluded from receiving screening and diagnostic services under the WWHP program and is ineligible under this Article.~~
- ~~**A.** General. To be eligible under this Article, a woman shall meet the requirements of this Article and:~~
1. ~~Be screened for breast and cervical cancer through AZ-NBCCEDP;~~
  2. ~~Be less than 65 years of age;~~
  3. ~~Be ineligible for Title XIX under Articles 14 and 15 in this Chapter;~~
  4. ~~Receive a positive screen under subsection (A)(1), a confirmed diagnosis through AZ-NBCCEDP, and need treatment for breast cancer or cervical cancer, including a pre-cancerous cervical lesion, as specified in R9-22-2004;~~
  5. ~~Not be covered under creditable coverage as specified in Section 2701(c) of the Public Health Services Act, 42 U.S.C. 300gg(c). For purposes of this Article, IHS or Tribal health coverage is not considered creditable coverage as specified in 42 U.S.C. 1396a(a)(10)(A)(ii), as amended by the Native American Breast and Cervical Cancer Treatment Technical Amendment Act of 2002; and~~
  6. ~~Meet the requirements under R9-22-1417 and R9-22-1418.~~
- ~~**B.** Ineligible woman. A woman is ineligible under this Article if the woman:~~
1. ~~Is an inmate of a public institution and federal financial participation (FFP) is not available,~~
  2. ~~Is at least age 21 but less than age 65 and resides in an Institution for Mental Disease (IMD) as defined in R9-22-112, except if allowed under the Administration's Section 1115 waiver, or~~
  3. ~~No longer meets an eligibility requirement under this Article.~~
- ~~**C.** Metastasized cancer. The AHCCCS Chief Medical Officer may continue a woman's eligibility under this Article if a metastasized cancer is found in another part of the woman's body and that metastasized cancer is a known or a presumed complication of the breast or cervical cancer as determined by the treating physician.~~
- ~~**D.** Reoccurrence of cancer. A woman shall have eligibility reestablished after eligibility under this Article ends if the woman is screened under the AZ-NBCCEDP program and additional breast cancer or cervical cancer, including a pre-cancerous cervical lesion, is found.~~
- ~~**E.** Ineligible male. A male is precluded from receiving screening and diagnostic services under the AZ-NBCCEDP program and is ineligible under this Article.~~

**R9-22-2004. Title XIX Application Process Treatment**

- ~~**A.** Title XIX application. A woman may apply for eligibility under this Article by submitting a complete Title XIX application as specified in R9-22-1405.~~
- ~~**B.** Submitting the Title XIX application. The woman may complete and submit a Title XIX application at the time of the WWHP screening or mail the application directly to the Administration.~~
- ~~**C.** Date of application. The date of the Title XIX application is the date of the diagnostic procedure that results in a positive diagnosis for breast cancer, cervical cancer, or a pre-cancerous cervical lesion.~~
- ~~**D.** Responsibility of a woman who is applying or who is a member. A woman who is applying or who is a member shall:~~
1. ~~Give complete and truthful information on the Title XIX application;~~
  2. ~~Comply with the requirements of this Article;~~
  3. ~~Provide medical insurance information including any changes in medical insurance; and~~
  4. ~~Inform the Administration about a change in address, residence, and alienage status.~~
- ~~**A.** Breast cancer. Coverage for treatment for breast cancer under this Article shall conclude on the last provider visit for the specific treatment of the cancer or at the end of hormonal therapy for the cancer, whichever is later. For purposes of this subsection treatment means:~~
1. ~~Lumpectomy or surgical removal of breast cancer;~~

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2. Chemotherapy;
  3. Radiation therapy; and
  4. A treatment for breast cancer that, as determined by the AHCCCS Chief Medical Officer, is considered the standard of care as supported by a peer-reviewed study published in a medical journal.
- B.** Pre-cancerous cervical lesion. Coverage for treatment for a pre-cancerous cervical lesion under this Article, including moderate or severe cervical dysplasia or carcinoma in situ, shall conclude on the last provider visit for specific treatment for the pre-cancerous lesion. For purposes of this subsection treatment means:
1. Conization;
  2. LEEP;
  3. Cryotherapy; and
  4. A treatment for pre-cancerous cervical lesion that, as determined by the AHCCCS Chief Medical Officer, is considered the standard of care as supported by a peer-reviewed study published in a medical journal.
- C.** Cervical cancer. Coverage for treatment for cervical cancer under this Article shall conclude on the last provider visit for the specific treatment for the cancer. For purposes of this subsection treatment means:
1. Surgery;
  2. Radiation therapy;
  3. Chemotherapy; and
  4. A treatment for cervical cancer that, as determined by the AHCCCS Chief Medical Officer, is considered the standard of care as supported by a peer-reviewed study published in a medical journal.
- R9-22-2005. Approval, Denial, or Discontinuance of Eligibility Application Process**
- A.** ~~Eligibility determination. The Administration shall determine eligibility under this Article within seven days of receipt of a complete Title XIX application.~~
- B.** ~~Approval. If a woman meets all the eligibility requirements in this Article, the Administration shall provide the woman with an approval notice. The approval notice shall contain:~~
1. ~~The name of the eligible woman,~~
  2. ~~The effective date of eligibility, and~~
  3. ~~Information regarding the woman's appeal and request for hearing rights.~~
- C.** ~~Denial. If the Administration denies eligibility, the Administration shall provide the woman with a denial notice. The denial notice shall contain:~~
1. ~~The name of the ineligible woman,~~
  2. ~~The specific reason why the woman is ineligible,~~
  3. ~~The legal citations supporting the reason for the denial,~~
  4. ~~The location where the woman can review the legal citations, and~~
  5. ~~Information regarding the woman's appeal and request for hearing rights.~~
- D.** ~~Discontinuance:~~
1. ~~Except as specified in subsection (D)(2), if a woman no longer meets an eligibility requirement under this Article, the Administration shall provide the woman an advance Notice of Action no later than 10 days before the effective date of the discontinuance.~~
  2. ~~The Administration may mail the Notice of Action no later than the effective date of the discontinuance if the Administration:~~
    - a. ~~Receives a written statement from the woman voluntarily withdrawing from AHCCCS;~~
    - b. ~~Receives information confirming the death of the woman,~~
    - c. ~~Receives returned mail with no forwarding address from the post office and the woman's whereabouts are unknown, or~~
    - d. ~~Receives information confirming that the woman has been approved for Title XIX services outside the state of Arizona.~~
  3. ~~The Notice of Action shall contain the:~~
    - a. ~~Name of the ineligible woman,~~
    - b. ~~Effective date of the discontinuance,~~
    - c. ~~Specific reason why the woman is discontinued,~~
    - d. ~~Legal citations supporting the reason for the discontinuance,~~
    - e. ~~Location where the woman can review the legal citations, and~~
    - f. ~~Information regarding the woman's appeal and request for hearing rights.~~
- E.** ~~Request for hearing. A woman who is approved, denied or discontinued for the Breast and Cervical Cancer Treatment Program may request a hearing under Article 8.~~
- A.** Application. A woman may apply for eligibility under this Article by submitting a complete application as specified in R9-22-1406.
- B.** Submitting the application. The woman may complete and submit an application at the time of the AZ-NBCCEDP screening. The AZ-NBCCEDP staff may mail or fax the application directly to the Administration.

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**C.** Date of application. The date of the application is the date of the diagnostic procedure that results in a positive diagnosis for breast cancer or cervical cancer, including a pre-cancerous cervical lesion.

**D.** Responsibility of a woman who is applying or who is a member. A woman who is applying or who is a member shall:

1. Provide medical insurance information, including any changes in medical insurance; and
2. Inform the Administration about a change in address, residence, and alienage status.

**R9-22-2006. ~~Effective Date of Eligibility~~ Approval, Denial, or Discontinuance of Eligibility**

The effective date of eligibility is the later of:

1. The first day of the month of a Title XIX application;
2. The first day of the first month the woman meets all the eligibility requirements in this Article; or
3. January 1, 2002.

**A.** Eligibility determination. The Administration shall determine eligibility under this Article and send the notice under subsection (B) or (C) within seven days of receiving a complete application.

**B.** Approval. If a woman meets all the eligibility requirements in this Article, the Administration shall provide the woman with an approval notice. The approval notice shall contain:

1. The name of the eligible woman, and
2. The effective date of eligibility.

**C.** Denial. If the Administration denies eligibility, the Administration shall provide the woman with a denial notice. The denial notice shall contain:

1. The name of the ineligible woman.
2. The specific reason why the woman is ineligible.
3. The legal citations supporting the reason for the denial.
4. The location where the woman can review the legal citations, and
5. Information regarding the woman's appeal and request for hearing rights.

**D.** Discontinuance.

1. Except as specified in subsection (D)(2), if a woman no longer meets an eligibility requirement under this Article, the Administration shall provide the woman a Notice of Action no later than 10 days before the effective date of the discontinuance.

2. The Administration may mail the Notice of Action no later than the effective date of the discontinuance if the Administration:

- a. Receives a written statement from the woman voluntarily withdrawing from AHCCCS.
- b. Receives information confirming the death of the woman.
- c. Receives returned mail with no forwarding address from the post office and the woman's whereabouts are unknown, or
- d. Receives information confirming that the woman has been approved for Title XIX services outside the state of Arizona.

3. The Notice of Action shall contain the:

- a. Name of the ineligible woman.
- b. Effective date of the discontinuance.
- c. Specific reason why the woman is discontinued.
- d. Legal citations supporting the reason for the discontinuance.
- e. Location where the woman can review the legal citations, and
- f. Information regarding the woman's appeal and request for hearing rights.

**E.** Request for hearing. A woman who is denied, or discontinued for the Breast and Cervical Cancer Treatment Program may request a hearing under Chapter 34.

**R9-22-2007. ~~Redetermination of Eligibility~~ Effective and End Date of Eligibility**

**A.** Redetermination. Except as provided in subsection (B), the Administration shall complete a redetermination of eligibility at least once a year. If a woman continues to meet the requirements of eligibility for the Breast and Cervical Cancer Treatment Program, the Administration shall notify the woman of continued eligibility for another year. A woman is not required to be screened for breast and cervical cancer through the WWHP under R9-22-2003 at redetermination.

**B.** Change in circumstance. The Administration shall complete a redetermination of eligibility if there is a change in the woman's circumstances, including a change in treatment under R9-22-2002, that may affect eligibility.

**A.** The effective date of eligibility is the later of:

1. The first day of the month in which an application is made; or
2. The first day of the first month the woman meets all the eligibility requirements in this Article.

**B.** The end date of eligibility:

1. For breast cancer, is 12 months after the last provider visit for a treatment specified in R9-22-2004 for the cancer or at the end of hormonal therapy for the cancer, whichever is later.
2. For pre-cancerous cervical lesion, is four months after the last provider visit for a treatment specified in R9-22-2004

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for the pre-cancerous lesion.

3. For cervical cancer, is 12 months after the last provider visit for a treatment specified in R9-22-2004 for the cancer.

**R9-22-2008. Redetermination of Eligibility**

- A. Redetermination.** Except as provided in subsection (B), the Administration shall redetermine eligibility at least once a year. If a woman continues to meet the requirements of eligibility for the Breast and Cervical Cancer Treatment Program under this Article, the Administration shall notify the woman of continued eligibility. A woman is not required to be screened for breast and cervical cancer through AZ-NBCCEDP at redetermination.
- B. Change in circumstance.** The Administration shall complete a redetermination of eligibility if there is a change in the woman's circumstances that may affect eligibility, including a change in treatment.

**NOTICE OF FINAL RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
CHILDREN'S HEALTH INSURANCE PROGRAM**

[R06-445]

**PREAMBLE**

- 1. Sections Affected**

Article 9	<b><u>Rulemaking Action</u></b>
R9-31-901	Repeal
	Repeal
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 36-2986  
Implementing statute: A.R.S. § 36-2982
- 3. The effective date of the rules:**

January 6, 2007
- 4. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 12 A.A.R. 2774, August 4, 2006  
Notice of Proposed Rulemaking: 12 A.A.R. 2888, August 18, 2006
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Mariaelena Ugarte  
Address: AHCCCS  
Office of Legal Assistance  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4693  
Fax: (602) 253-9115  
E-mail: AHCCCSrules@azahcccs.gov
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**

The rule provides current standards for processing and finding erroneous Medicaid payments due to errors made while determining eligibility as detected through the Medicaid Eligibility Quality Control (MEQC) program. These processes are required in an Intergovernmental Agreement (IGA) between AHCCCS and the Department of Economic Security (DES) and not in rule. The Administration believes these rules are subject to the exemption from the Administrative Procedure Act, A.R.S. § 41-1005(A)(15). Therefore, the MEQC-related rules are being repealed.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The agency did not review or rely on any study.
- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

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Not applicable

9. **The summary of the economic, small business, and consumer impact:**

The Administration is exempt, as described under A.R.S. § 41-1055(D)(3), from assessing the economic, small business, consumer impact since the rulemaking repeals rules regarding processes that are addressed in an IGA between the Department of Economic Security and the Administration and not necessary in rule.

Therefore, the rulemaking decreases reporting and recordkeeping burdens concerning these repealed rules.

10. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

There were not any significant changes from the language proposed to the language finalized. Minor technical and grammatical changes were made at the suggestion of G.R.R.C. staff.

The Administration made the rules more clear, concise, and understandable by making grammatical, verb tense, punctuation, and structural changes throughout the rules.

11. **A summary of the comments made regarding the rule and the agency response to them:**

None were received.

12. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

13. **Incorporations by reference and their location in the rules:**

None

14. **Was this rule previously adopted as an emergency rule?**

No

15. **The full text of the rules follows:**

TITLE 9. HEALTH SERVICES

CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
CHILDREN'S HEALTH INSURANCE PROGRAM

ARTICLE 9. ~~QUALITY CONTROL~~ Repealed

Section

R9-31-901. ~~General Provisions~~ Repealed

ARTICLE 9. ~~QUALITY CONTROL~~ Repealed

R9-31-901. ~~General Provisions~~ Repealed

~~A. The Director has full operational authority to adopt rules or to use the appropriate rules for administration and oversight of quality control as specified in A.R.S. § 36-2986.~~

~~B. As specified in A.R.S. § 36-2982, the Administration has the authority to establish a process to audit eligibility determinations made by AHCCCS or the entities with which the Administration contracts or enters into an intergovernmental agreement.~~

NOTICE OF FINAL RULEMAKING

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

[R06-448]

PREAMBLE

1. Sections Affected

R19-3-501  
R19-3-502  
R19-3-502  
R19-3-503  
R19-3-504

Rulemaking Action

Amend  
Repeal  
New Section  
Amend  
Amend

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R19-3-505	Repeal
R19-3-505	New Section
R19-3-506	Repeal
R19-3-506	New Section
R19-3-507	Repeal
R19-3-507	New Section
R19-3-508	Repeal
R19-3-508	New Section
R19-3-509	Repeal
R19-3-509	New Section
R19-3-510	Repeal
R19-3-510	New Section
R19-3-511	Repeal
R19-3-511	New Section
R19-3-512	Repeal
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R19-3-530	New Section
R19-3-531	Repeal
R19-3-531	New Section
R19-3-532	Repeal
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R19-3-536	Repeal
R19-3-536	New Section
R19-3-537	Repeal

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R19-3-537	New Section
R19-3-538	Repeal
R19-3-538	New Section
R19-3-539	Repeal
R19-3-539	New Section
R19-3-540	Repeal
R19-3-540	New Section
R19-3-541	Repeal
R19-3-541	New Section
R19-3-542	Repeal
R19-3-542	New Section
R19-3-543	Repeal
R19-3-543	New Section
R19-3-544	Repeal
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R19-3-554	New Section
R19-3-555	New Section
R19-3-556	New Section
R19-3-557	New Section
R19-3-558	New Section
R19-3-559	New Section
R19-3-560	New Section
R19-3-561	New Section
R19-3-562	New Section

**2. The statutory authority for rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 41-2501(F)

Implementing statutes: A.R.S. §§ 5-509, 41-2501(F)

**3. The effective date of the rules:**

January 6, 2007

**4. A list of all previous notices appearing in the Register addressing the final rules:**

Notice of Rulemaking Docket Opening: 10 A.A.R. 371, January 30, 2004

Notice of Rulemaking Docket Opening: 11 A.A.R. 4145, October 21, 2005

Notice of Proposed Rulemaking: 12 A.A.R. 1830, June 2, 2006

**5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: J. Art Macias Jr., Executive Director

Address: Arizona State Lottery  
4740 E. University Drive  
Phoenix, AZ 85034

Telephone: (480) 921-4505

Fax: (480) 921-4488

E-mail: amacias@azlottery.gov

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or

Name: Pam DiNunzio, Budget Manager  
Address: Arizona State Lottery  
4740 E. University Drive  
Phoenix, AZ 85034  
Telephone: (480) 921-4489  
Fax: (480) 921-4488  
E-mail: pdinunzio@azlottery.gov

**6. An explanation of the rules, including the agency's reason for initiating the rules:**

The Lottery's Procurement rules establish the policies and procedures for procurements relating to lottery game design and operation or the purchase of lottery equipment, tickets and related materials. The amended rules remove outdated terminology and procedures, clarify existing language, and add new language as necessary. The rules are substantially equivalent to the policies and procedures of the Arizona Procurement Code as required in A.R.S. § 41-2501(F), and conform to recent state procurement rule changes approved by the Governor's Regulatory Review Council and effective April 8, 2006.

**7. A reference to any study relevant to the rules that the agency reviewed and either relied on in its evaluation of or justification for the rules or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

**8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. The summary of the economic, small business, and consumer impact:**

This rulemaking clarifies existing language and conforms Lottery rules to recently approved state procurement rules. The rules prescribe procurement procedures pertaining to lottery game design and operation or the purchase of lottery equipment, tickets, and related materials. The Lottery anticipates amendments to Article 5 will impact the agency, as well as businesses that supply products or services to the Lottery.

A. *The Arizona State Lottery.* The Lottery must establish procurement procedures relating to game design and operation of the lottery or the purchase of lottery equipment, tickets, and related materials in accordance with A.R.S. § 41-2501(F). This rulemaking does not change the Lottery's procurement authority.

Costs to the Lottery related to this rulemaking include time spent by procurement staff to process purchases and secure contracts for the agency. These costs, as well as personnel expenses for the Lottery's two full-time equivalent positions, are included in the agency's annual appropriation and are considered part of normal operating expenses. The Lottery does not anticipate any additional costs to the agency or current procurement functions as a result of this rulemaking. Instead, the proposed changes should reduce administrative costs for small purchases and improve procurement efficiency.

The Lottery has had no procurement appeals within the last two fiscal years. The proposed rules are better organized and provide greater clarity than existing procurement rules, which should improve understanding and reduce the potential risk of protests and appeals in the future.

B. *Businesses Directly Affected by this Rulemaking.* Businesses impacted by these rules are vendors wishing to supply products or services to the Lottery. The rules provide for competition, consistency, and equal treatment of all vendors with respect to procurement procedures. Improved organization, presentation, and clarity will make the rules easier to understand for potential vendors. Businesses will also benefit from consistency between Lottery procurement rules and state procurement rules.

The impact on small businesses should be positive. These businesses will benefit from procurements specifically dedicated to small businesses because the set-aside requirement as provided in R19-3-532 has increased to \$50,000, consistent with state procurement rules. These purchases must be awarded to businesses that employ less than 100 employees, or that had gross annual receipts of less than \$4 million in the last complete fiscal year.

The revised set-aside requirement should appreciably increase the number of contracts exclusively available to small businesses and provide more open access to contracting opportunities. This change will also reduce the paperwork burden on vendors and the cost for preparing bids for small contracts. In addition, the proposed changes should provide a better understanding of the rules as they relate to small businesses, as compared to the existing rules.

In FY06, the Lottery conducted 164 procurements and the amount of total purchases was \$31.6 million. Approximately 32% of Lottery procurements went to minority, women-owned or small businesses, which amounted to 32% (\$10.1 million) of expended funds. However, there is a large portion of total annual purchases where the Lottery has

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no opportunity to direct funds to minority, women-owned or small businesses. An example would include purchases for specialized Lottery needs such as the online game system and instant ticket printing services. In these instances, there are no legitimate minority, women-owned or small business providers. If expenditures are excluded where there is no opportunity to use a minority, women-owned or small business provider, the percentage of purchases to these categories increases to 37% and represents approximately 76% of total expenditures.

As required in A.R.S. § 41-2501(F), these rules are substantially equivalent to revised state procurement rules, including provisions related to small businesses. Small businesses will benefit from this consistency with respect to procurement procedures and requirements.

C. *State Revenues.* This rulemaking should not have any immediate measurable impact on state revenues or expenses. However, more efficient procurement procedures will help ensure the best value to the state when purchasing goods and services. The long-term effect should be a cost reduction resulting from greater efficiencies in the procurement process and the ability to negotiate the lowest possible cost to the state.

This rulemaking clarifies procurement procedures and will not have any identifiable economic impact on political subdivisions of the state, private and public employment, Lottery retailers, or the general public.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

Minor technical and grammatical changes were made at the request of G.R.R.C. staff. There are no substantive changes between the final rules and the proposed rules. However, the economic, small business, and consumer impact (Preamble Item 9) was changed to reflect more recent information. Expenditure percentages to minority, women-owned or small businesses were updated for FY06 data. At the time the proposed rules were published, only FY05 data was available.

**11. A summary of the comments made regarding the rules and the agency response to them:**

No oral or written comments were received regarding the rule.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

**13. Incorporations by reference and their location in the rules:**

Not applicable

**14. Were these rules previously made as emergency rules?**

No

**15. The full text of the rules follows:**

**TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING**

**CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION**

**ARTICLE 5. PROCUREMENTS**

Section

- R19-3-501. Definitions
- R19-3-502. ~~Time and Place of Market Price~~ Written Determination
- R19-3-503. Confidential Information
- R19-3-504. General Provisions
- R19-3-505. ~~Assignment of Rights and Duties~~ Prospective Suppliers List
- R19-3-506. ~~Change of Name~~ Source Selection Method: Determination Factors
- R19-3-507. ~~Installment Purchases~~ Solicitation
- R19-3-508. ~~Multiple source Contracting~~ Bid Solicitation Requirements
- R19-3-509. ~~Competitive Sealed Bidding~~ Request for Proposal Solicitation Requirements
- R19-3-510. ~~Competitive Sealed Proposals~~ Pre-Offer Conferences
- R19-3-511. ~~Small Business Set-aside~~ Solicitation Amendment
- R19-3-512. ~~Procurements Not Exceeding an Aggregate Amount of \$25,000~~ Modification or Withdrawal of Offer Before Offer Due Date and Time
- R19-3-513. ~~Procurements Not Exceeding an Aggregate Amount of \$10,000~~ Cancellation of a Solicitation Before Offer Due Date and Time
- R19-3-514. ~~Sole Source Procurement~~ Receipt, Opening, and Recording of Offers
- R19-3-515. ~~Emergency Procurements~~ Late Offers, Modifications, Withdrawals
- R19-3-516. ~~Cancellation of Invitation for Bids or Requests for Proposals~~ Cancellation of Solicitation After Receipt of

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	<u>Offers and Before Award</u>
R19-3-517.	<u>Responsibility of Bidders and Offerors One Offer Received</u>
R19-3-518.	<u>Prequalification of Contractors Offer Mistakes Discovered After Offer Opening and Before Award</u>
R19-3-519.	<u>Bid and Contract Security Extension of Offer Acceptance Period</u>
R19-3-520.	<u>Bid and Performance Bonds for Material or Service Contracts Determination of Not Susceptible for Award</u>
R19-3-521.	<u>Cost or Pricing Data Bid Evaluation</u>
R19-3-522.	<u>Types of Contracts Clarification of Proposal Offers</u>
R19-3-523.	<u>Approval of Accounting System Proposal Negotiations with Responsible Offerors and Revisions of Offers</u>
R19-3-524.	<u>Multi-term Contracts Final Proposal Revisions</u>
R19-3-525.	<u>Right to Inspect Plant Evaluation of Proposal Offers</u>
R19-3-526.	<u>Right to Audit Records Responsibility Determinations</u>
R19-3-527.	<u>Reporting of Anticompetitive Practices Bid Contract Award</u>
R19-3-528.	<u>Anticompetitive Practices among Bidders or Offerors Proposal Contract Award</u>
R19-3-529.	<u>Retention of Procurement Records Mistakes Discovered After Bid Award</u>
R19-3-530.	<u>Record of Procurement Actions Mistakes Discovered After Proposal Award</u>
R19-3-531.	<u>Content of Specifications Procurements not Exceeding the Amount Prescribed in A.R.S. § 41-2535</u>
R19-3-532.	<u>Types of Specifications Solicitation – Request for Quotation</u>
R19-3-533.	<u>Confidentiality Request for Quotation Issuance</u>
R19-3-534.	<u>Maximum Practicable Competition Quotation Contract Award</u>
R19-3-535.	<u>Requirements of Nonrestrictiveness Sole Source Procurements</u>
R19-3-536.	<u>Preparation of Specifications by Persons Other than State Personnel Emergency Procurements</u>
R19-3-537.	<u>Conflicts of Interest Competition Impracticable Procurements</u>
R19-3-538.	<u>Filing of a Protest Request for Information</u>
R19-3-539.	<u>Time for Filing Protest Demonstration Projects</u>
R19-3-540.	<u>Stay of Procurement During Protest General Services Administration Contracts</u>
R19-3-541.	<u>Confidential Information Contract Clauses</u>
R19-3-542.	<u>Decision by the Procurement Officer Assignment of Rights and Duties</u>
R19-3-543.	<u>Remedies Change of Name</u>
R19-3-544.	<u>Appeals to Protest Decisions to the Director Contract Change Orders and Amendments</u>
R19-3-545.	<u>Stay of Procurement During Appeal Multi-term Contracts</u>
R19-3-546.	<u>Dismissal Before Hearing Terms and Conditions</u>
R19-3-547.	<u>Commission’s Rejection of Award Determination of Fair and Reasonable Price</u>
R19-3-548.	<u>Contract Claims Submission and Certification of Cost or Pricing Data</u>
R19-3-549.	<u>Resolution of Contract Claims Refusal to Submit Cost or Pricing Data</u>
R19-3-550.	<u>Appeals of Contract Claim Decisions to the Director Defective Cost or Pricing Data</u>
R19-3-551.	<u>Debarment and Suspension of Contractors Protest of Solicitations and Contract Awards</u>
R19-3-552.	<u>Exclusive Remedy Stay of Procurements During the Protest</u>
R19-3-553.	<u>Resolution of Solicitation and Contract Award Protests</u>
R19-3-554.	<u>Remedies by the Procurement Officer</u>
R19-3-555.	<u>Agency Report</u>
R19-3-556.	<u>Controversies Involving Contract Claims Against the Lottery</u>
R19-3-557.	<u>Procurement Officer’s Decision</u>
R19-3-558.	<u>Issuance of a Timely Decision</u>
R19-3-559.	<u>Appeals and Reports to the Director</u>
R19-3-560.	<u>Controversies Involving Lottery Claims Against the Contractor</u>
R19-3-561.	<u>Online Solicitation Process</u>
R19-3-562.	<u>Guidance</u>

ARTICLE 5. PROCUREMENTS

**R19-3-501. Definitions**

In this Article, unless the context otherwise requires:

1. “Best interests of the Lottery” means advantageous to the Lottery.
2. “Bid” means an offer in response to solicitation.
- 2-3. “Business” means a corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other private legal entity.
- 3-4. “Change order” means a ~~document~~ document, signed by the ~~Director~~ Director, which directs the contractor to make a change that the contract authorizes the Director to order.
5. “Competitive range” means the range determined on the basis of the criteria stated in the solicitation and shall include all offers that have a reasonable chance of being selected for award.

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- 4-6. "Contract" means an agreement, regardless of what it is called, for the procurement of ~~lottery~~ Lottery equipment, tickets, and related materials.
- 5-7. "Contract ~~modification~~ amendment" means a written alteration in the terms or conditions of a contract accomplished by mutual action of the parties to the contract or a unilateral exercise of a right contained in the contract.
- 6-8. "Contractor" means a person who has a contract with the Lottery.
- 7-9. "Cost analysis" means the evaluation of cost data.
- 8-10. "Cost data" means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been incurred or are expected to be incurred by the contractor in performing the contract.
- 9-11. "Cost-plus-a-percentage-of-cost-contract" means ~~a contract under which the parties agree, before completion of the contract work, that the fee is a predetermined percentage of the total cost of the work~~ the parties to a contract agree that the fee will be a predetermined percentage of the cost of work performed and the contract does not limit the cost and fee before authorization of performance.
- 10-12. "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs that are reasonable, allowable, and allocable in accordance with the contract terms and the provisions of this Article, and a fee, if provided for in the contract.
- 11-13. "Days" means calendar days and is computed under A.R.S. § 1-243, unless otherwise specified in the solicitation or contract.
14. "Defective data" means data that is inaccurate, incomplete, or outdated.
- 12-15. "Director" means the Executive Director of the State Lottery.
- 13-16. "Discussions" means oral or written negotiation between the Lottery and an offeror during which information is exchanged about specifications, scope of work, terms and conditions, and price included in an initial proposal. Communication with an offeror for the sole purpose of clarification does not constitute "discussions."
- 14-17. "Filed" means delivered to the office of the Director. A time/date stamp affixed to a document by the office of the Director when the document is delivered determines the time of filing.
18. "Governing instruments" means legal documents that establish the existence of an organization and define its powers, including articles of incorporation or association, constitution, charter, bylaws, or similar documents.
- 15-19. "Incremental award" means a grant of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity required.
- 16-20. "Interested party" means an ~~actual or prospective bidder or offeror or prospective offeror~~ whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract, or by the failure to award a contract. Whether an offeror or prospective offeror has an economic interest depends upon the circumstances of each case.
- 17-21. "Invitation for bids" means all documents, whether attached or incorporated by reference, that are used to solicit bids in accordance with ~~R19-3-509~~ R19-3-508.
18. "Materials" means ~~all Lottery property including equipment, supplies, printing, insurance, and leases of property but does not include land or a permanent interest in land or real property.~~
- 19-22. "Minor informality" means ~~mistakes,~~ any mistake, excluding a judgmental error, that has negligible effect on price, quantity, quality, delivery, or other contractual terms and the waiver or correction of which does not prejudice other bidders or offerors.
- 20-23. "Multiple award" means a grant of an indefinite quantity contract for one or more similar materials or services to more than one bidder or offeror.
- 21-24. "Multi-step sealed bidding" means a two-phase bidding process consisting of a technical phase and a price phase.
25. "Negotiation" means an exchange or series of exchanges between the Lottery and an offeror or contractor that allows the Lottery or the offeror or contractor to revise an offer or contract, unless revision is specifically prohibited by these rules or statutes.
26. "Offer" means a response to a solicitation.
27. "Offeror" means a person that responds to a solicitation.
- 22-28. "Person" means any corporation, limited liability company, limited liability partnership, partnership, business, individual, union, committee, club, other organization, or group of individuals.
29. "Price data" means information concerning prices, including profit, for materials, services, or construction substantially similar to the materials, services, or construction to be procured under a contract or subcontract. In this definition, "prices" refers to offered selling prices, historical selling prices, or current selling prices of the items to be purchased.
- 23-30. "Procurement" means ~~buying, purchasing, renting, leasing, or otherwise acquiring any lottery materials or services. Procurement consists of all functions that pertain to obtaining any lottery material or services, including description or requirements, selection and solicitation of sources, preparation and award of contract, and contract administration.~~ all functions that pertain to obtaining any materials or services for the design or operation of a Lottery game or the purchase of Lottery equipment, tickets, and related materials.
31. "Procurement file" means the official records file of the Director whether located in the office of the Director or at a

- public procurement unit.
32. “Procurement request” means the document that initiates a procurement.
33. “Proposal” means an offer submitted in response to a solicitation.
34. “Prospective offeror” means a person that expresses an interest in a specific solicitation.
24. ~~“Proprietary specification” means a statement that describes a material made and marketed by a person having the exclusive right to manufacture and sell the material and excludes other material with similar quality, performance, or functional characteristics.~~
- 25.35. “Purchase description” means the words used in a solicitation to describe ~~lottery~~ Lottery materials to be procured and includes specifications attached to, or made a part of, the solicitation.
- 26.36. “Purchase request” or “purchase requisition” means a document or electronic transmission in which the Director requests that a contract be entered into for a specific need and may include a description of a requested item, delivery schedule, transportation data, criteria for evaluation, suggested sources of supply, and information needed to make a written determination required by this Article.
- 27.37. “Request for proposals” means all documents, whether attached or incorporated by reference, that are used to solicit proposals in accordance with ~~R19-3-510~~ R19-3-509.
- 28.38. “Responsible bidder or offeror” means a person who has the capability to perform contract requirements and the integrity and reliability necessary to ensure a good faith performance.
- 29.39. “Responsive bidder or offeror” means a person who submits a bid that conforms in all material respects to the invitation for bids or request for proposals.
40. “Reverse auction” means a procurement method in which offerors are invited to bid on specified goods or services through online bidding and real-time electronic bidding. During an electronic bidding process, offerors’ prices or relative ranking are available to competing offerors and offerors may modify their offer prices until the closing date and time.
- 30.41. “Services” means the labor, time, or effort furnished by a contractor with no ~~exception~~ expectation that a specific end product other than required reports and performance will be delivered. Services does not include employment agreements or collective bargaining agreements.
- 31.42. “Small business” means a ~~concern, including its affiliates, that is independently owned and operated, is not dominant in its field, and employs fewer than 100 full-time employees or that had gross annual receipts of less than \$4 million dollars in its last fiscal year~~ for-profit or not-for-profit organization, including its affiliates, with fewer than 100 full-time employees or gross annual receipts of less than four million dollars for the last complete fiscal year.
- 32.43. “Solicitation” means an invitation for bids, ~~a request for technical offers,~~ a request for proposals, a request for quotations, or any other ~~document by which the Director invites bids or proposals~~ invitation or request issued by the Lottery to invite a person to submit an offer.
- 33.44. “Specification” means a description of the physical or functional characteristics, or of the nature of a ~~lottery~~ Lottery material or service. Specification includes a description of any requirement for inspecting, testing, or preparing a ~~lottery~~ Lottery material for delivery.
- 34.45. “Subcontractor” means a person who contracts to perform work or render service to a contractor or to another subcontractor as a part of a contract with the Lottery.
46. “Suspension” means an action taken by the Director or the state procurement office that temporarily disqualifies a person from participating in a state procurement process.
- 35.47. “Technical offer” means unpriced written information from a prospective contractor stating the manner in which the prospective contractor intends to perform certain work, its qualifications, and its terms and conditions.
- 36.48. “Trade secret” means ~~a confidential, commercially valuable plan, formula, process, or device that is used to make, prepare, compound, or process trade commodities and that is a product of either innovation or substantial effort~~ information, including a formula, pattern, device, compilation, program, method, technique, or process, that is the subject of reasonable efforts to maintain its secrecy and that derives independent economic value, actual or potential, as a result of not being generally known to and not being readily ascertainable by legal means.

**R19-3-502. Time and Place of Market Price Written Determination**

~~If the price of a good at a time or place described in this Article is not readily available, the price prevailing within any reasonable time before or after the time described or at any other place that in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the good to or from the other place.~~

- A.** If a written determination is required under applicable law, the procurement officer shall include the basis for the action taken in the written determination.
- B.** The procurement officer shall place the written determination into the Lottery’s procurement file.
- C.** A procurement file is considered the official records file of the Lottery.

**R19-3-503. Confidential Information**

**A.** If a person believes a bid, proposal, offer, specification, or protest contains information that should be withheld from the

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~~public, the person shall advise the Director of this fact in a written statement that includes why the information should be withheld.~~

- ~~B.~~ The Director shall review the statement and information and issue a written decision whether the information will be withheld.
- ~~C.~~ The Director shall provide a copy of the written decision to the person that requested the information be withheld.
- A. If a person wants to assert that a person's offer, specification, or protest contains a trade secret or other proprietary information; a person shall include with the submission a statement supporting this assertion. A person shall clearly designate the beginning and end of any information that is designated a trade secret or other proprietary information, using the term "confidential." Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information under this Section.
- B. Until a final determination is made under subsection (D), the procurement officer shall not disclose information designated as confidential under subsection (A) except to those individuals deemed by the procurement officer to have a legitimate Lottery interest.
- C. Upon protest to a confidential submission, the procurement officer shall request the offeror and protestor submit factual and legal comments on the issue by a date certain.
- D. After reviewing the statements or expiration of the time to comment, or both, the procurement officer shall make a determination that:
  - 1. The designated information is confidential and the procurement officer shall not disclose the information except to those individuals deemed by the procurement officer to have a legitimate Lottery interest;
  - 2. The designated information is not confidential; or
  - 3. Additional information is required before a final confidentiality determination can be made.
- E. If the procurement officer determines that information submitted is not confidential, a person who made the submission shall be notified in writing. The notice shall include a time period for requesting a review of the determination. The procedures and requirements for review in A.R.S. Title 41, Chapter 6, Article 10 apply to such a review by the Director.
- F. The procurement officer may release information designated as confidential under subsection (A) if:
  - 1. A request for review is not received by the procurement officer within the time period specified in the notice; or
  - 2. The Director, after review of the recommended findings of fact and conclusions of law, makes a written determination that the designated information is not confidential.

**R19-3-504. General Provisions**

- A. A person that participates in any aspect of a specific procurement as an advisor to the Lottery shall not receive any direct or indirect benefit from a contract for the procurement.
- B. The Director shall not pay for any material or service unless fully approved.
- ~~C.~~ The Director shall use the source selection procedures established by the State Procurement Office when selecting a source selection for a procurement.

**R19-3-505. Assignment of Rights and Duties Prospective Suppliers List**

~~A Lottery contractor shall not transfer or otherwise assign its rights and duties without the written consent of the Director.~~

- A. The procurement officer shall compile and maintain a prospective suppliers list. To be included on the prospective suppliers list, a person shall register with the procurement officer the company name, address, e-mail, contact name and area of product or service interest.
- B. The procurement officer may remove suppliers from the prospective suppliers list if a notice or e-mail sent to the supplier is returned. The procurement officer shall maintain a record of the date and reason for removal of a supplier from the prospective suppliers list.

**R19-3-506. Change of Name Source Selection Method: Determination Factors**

~~If a contractor wishes to change the name in which it holds a Lottery contract, the contractor shall advise the Director in a written statement. The Director shall enter into a written agreement with the contractor in the changed name, providing that no terms and conditions of the contract are changed.~~

- A. The procurement officer shall determine the applicable source selection method for a procurement, estimating the aggregate dollar amount of the contract and ensuring that the procurement is not artificially divided, fragmented, or combined to circumvent A.R.S. §§ 5-509 and 41-2501(F).
- B. If the procurement officer believes that an existing Arizona state contract is sufficient to satisfy the Lottery's requirements, the procurement officer may procure those materials and services covered by such contracts.
- C. Before soliciting for offers for a competitive sealed proposal, the procurement officer shall determine in writing that an invitation for bid is not practicable or advantageous to the Lottery. Competitive sealed bidding may not be practicable or advantageous if it is necessary to:
  - 1. Use a contract other than a fixed-price type;
  - 2. Negotiate with offerors concerning the technical and price aspects of their offers and any other aspects of their offer or the solicitation;
  - 3. Permit offerors to revise their offers; or

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4. Compare the different price, quality, and contractual factors of the offers submitted.
- D.** The procurement officer may make a class determination that it is either not practicable or not advantageous to the Lottery to procure specified types of materials or services by invitation for bid. The procurement officer may modify or revoke a class determination at any time.
- E.** The procurement officer shall not award a contract or incur an obligation on behalf of the Lottery unless sufficient funds are available for the procurement, consistent with A.R.S. § 35-154. If it is reasonable to believe that sufficient funds will become available for a procurement, the procurement officer may issue a notice with the solicitation indicating that funds are not currently available and that any contract awarded will be conditioned upon the availability of funds.

**R19-3-507. Installment Purchases Solicitation**

An installment purchase may be used if advantageous to the Lottery. If an installment purchase is to be used, the Lottery shall include a provision for installment purchase payments in the solicitation.

- A.** The procurement officer shall issue a solicitation at least 14 days before the offer due date and time, unless the procurement officer determines a shorter time is necessary for a particular procurement. If a shorter time is necessary, the procurement officer shall document the specific reasons in the procurement file.
- B.** The procurement officer shall:
  1. Advertise the procurement not less than two weeks before offer due date at least one time in a newspaper of general circulation and place the notice on the Lottery web site; and
  2. At a minimum, provide written notice to the prospective suppliers that have registered with the Lottery's procurement officer for the specific material, service, or construction solicited.

**R19-3-508. Multiple source Contracting Bid Solicitation Requirements**

- A.** The Lottery shall make an incremental award if the Director determines in writing that the award is necessary to obtain the required quantity or delivery.
- B.** The Lottery shall make a multiple award if the Director determines in writing that a single award is not advantageous to the Lottery. A multiple award shall be limited to the least number of contractors necessary to meet the requirements of the Lottery.

The procurement officer shall include the following in the solicitation:

1. Instruction to offerors, including:
  - a. Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers or other documents will be received, and the offer acceptance period;
  - b. The deadline date for requesting a substitution or exception to the solicitation;
  - c. The manner by which the offeror is required to acknowledge amendments;
  - d. The minimum required information in the offer;
  - e. The specific requirements for designating trade secrets and other proprietary information as confidential;
  - f. Any specific responsibility criteria;
  - g. Whether the offeror is required to submit samples, descriptive literature, or technical data with the offer;
  - h. Any evaluation criteria;
  - i. A statement of where documents incorporated by reference are available for inspection and copying;
  - j. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
  - k. Certification by the offeror that submission of the offer did not involve collusion or other anticompetitive practices;
  - l. Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;
  - m. That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
  - n. Any bid security required;
  - o. The means required for submission of an offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
  - p. Any designation of the specific bid items and amounts to be recorded at offer opening; and
  - q. Any other offer submission requirements;
2. Specifications, including:
  - a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
  - b. If a brand name or equal specification is used, instructions that use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to the brands designated qualify for consideration; and
  - c. Any other specification requirements;

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3. Terms and Conditions, including:
  - a. Whether the contract will include an option for extension; and
  - b. Any other contract terms and conditions.

**R19-3-509. Competitive Sealed Bidding Request for Proposal Solicitation Requirements**

- ~~A.~~ The Lottery shall include a purchase description and all contractual terms and conditions applicable to a procurement in any invitation for bids issued.
- ~~B.~~ In accordance with this Article, the Lottery shall give public notice of an invitation for bids before the date set in the invitation for the opening of bids. The notice shall be published one or more times in a newspaper of general circulation before bid opening. If the invitation for bids is for the procurement of services, the notice shall be published twice in a newspaper within this state. The second publication of the notice shall be not less than six nor more than 10 days after the first publication and not less than two weeks before bid opening.
- ~~C.~~ The Lottery shall open bids publicly at the time and place designated in the invitation for bids. The name of each bidder, the amount of each bid, and other relevant information specified in this Article shall be recorded and placed in the contract file. This record shall be open to public inspection at the bid opening. The bids shall not be open for public inspection until after a contract is awarded. To the extent the bidder designates and the Director concurs, trade secrets or other proprietary data contained in the bid documents shall remain confidential in accordance with this Article.
- ~~D.~~ The Lottery shall unconditionally accept bids without alteration or correction, except as authorized in this Article. Bids shall be evaluated based only on the criteria and requirements in the invitation for bids.
- ~~E.~~ The Director may permit a bidder to correct or withdraw an erroneous bid before or after bid opening, if the Director determines that the bidder made a bid mistake. After bid opening, corrections in bid prices or other provisions of bids prejudicial to the interest of the Lottery or fair competition shall not be permitted. Except as otherwise provided in this Article, the Director shall support a decision to permit the correction or withdrawal of a bid, or to cancel an award or contract based on a bid mistake by a written determination.
- ~~F.~~ The Lottery shall award a contract to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria in the invitation for bids. The amount of an applicable transaction privilege or use tax of a political subdivision of this state shall not be a factor in determining the lowest responsible and responsive bidder if a competing bidder located outside of this state is not subject to a transaction privilege or use tax of a political subdivision of this state.
- ~~G.~~ A multi-step sealed bidding method may be used if the Director determines in writing that it is not practical to prepare a definitive purchase description initially that is suitable to permit an award based on competitive sealed bidding. The multi-step sealed bidding method involves issuing an invitation for bids requesting the submission of technical offers followed by a second invitation for bids requesting the submission of price offer. The second invitation for bids shall be limited to those bidders whose technical offers are determined to be acceptable under the criteria in the first invitation for bids.
- ~~H.~~ If the price of a recycled paper product that conforms to specifications is within 5% of a low bid product that is not recycled and the recycled product bidder is otherwise the lowest responsible and responsive bidder, the Lottery shall make the award to the bidder offering the recycled product.

The procurement officer shall include the following in the solicitation:

1. Instructions to offerors, including:
  - a. Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers will be received, and the offer acceptance period;
  - b. The deadline date for requesting a substitution or exception to the solicitation;
  - c. The manner by which the offeror is required to acknowledge amendments;
  - d. The minimum information required in the offer;
  - e. The specific requirements for designating trade secrets and other proprietary information as confidential;
  - f. Any specific responsibility or susceptibility criteria;
  - g. Whether the offeror is required to submit samples, descriptive literature, and technical data with the offer;
  - h. Evaluation factors and the relative order of importance;
  - i. A statement of where documents incorporated by reference are available for inspection and copying;
  - j. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
  - k. Certification by the offeror that submission of the offer did not include collusion or other anticompetitive practices;
  - l. Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;
  - m. That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
  - n. Any offer security required;
  - o. The means required for submission of offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;

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- p. Any cost or pricing data required;
- q. The type of contract to be used;
- r. A statement that negotiations may be conducted with offerors reasonably susceptible of being selected for award and that fall within the competitive range; and
- s. Any other offer requirements specific to the solicitation.
- 2. Specifications, including:
  - a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
  - b. If a brand name or equal specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration; and
  - c. Any other specification requirements specific to the solicitation.
- 3. Terms and Conditions, including:
  - a. Whether the contract is to include an extension option; and
  - b. Any other contract terms and conditions.

**R19-3-510. ~~Competitive Sealed Proposals Pre-Offer Conferences~~**

- ~~A. If the Director determines in writing that the use of competitive sealed bidding is not practicable or not advantageous to the Lottery, the Lottery may enter into a contract by competitive sealed proposals.~~
- ~~B. The Lottery shall solicit competitive sealed proposals through a request for proposals.~~
- ~~C. The Lottery shall give public notice of the request for proposals in the same manner as provided in R19-3-509(b).~~
- ~~D. The Lottery shall open proposals publicly at the time and place designated in the request for proposals. The name of each offeror and other relevant information specified in this Article shall be publicly read and recorded in the contract file. All other information contained in the proposals shall be confidential to avoid disclosure of contents prejudicial to competing offerors during the process of evaluation and contract negotiation. The proposals shall be open for public inspection after contract award. To the extent a bidder designates and the Director concurs, a trade secret or other proprietary data contained in bid documents shall remain confidential in accordance with this Article.~~
- ~~E. The Lottery shall include in a request for proposals information regarding the relative importance of price and other evaluation factors. Specific numerical weighing is not required.~~
- ~~F. The Lottery may specify in a request for proposals that discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible to being selected for award to ensure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and revision of proposals. Revisions of proposals may be permitted after submission and before award for the purpose of obtaining best and final offers. The Lottery shall not disclose any information derived from proposals submitted by competing offerors in conducting discussions.~~
- ~~G. The Lottery shall award a contract to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Lottery taking into consideration the evaluation factors in the request for proposals. The Lottery shall not use other factors or criteria in the evaluation. The amount of an applicable transaction privilege or use tax of a political subdivision of this state shall not be a factor in determining the most advantageous proposal if a competing offeror located outside this state is not subject to a transaction privilege or use tax of a political subdivision of this state. The written determination that a proposal is the most advantageous to the Lottery shall be retained in the contract file.~~

The procurement officer may conduct one or more pre-offer conferences. If a pre-offer conference is conducted, it shall be not less than seven days before the offer due date and time, unless the procurement officer makes a written determination that the specific needs of the procurement justify a shorter time. Statements made during a pre-offer conference are not amendments to the solicitation.

**R19-3-511. ~~Small Business Set-aside Solicitation Amendment~~**

- ~~A. Except as provided under subsection (D), the Lottery shall restrict purchases estimated to cost less than \$10,000 to small businesses in accordance with procedures set forth in subsections (B) and (C). Purchases shall be conducted in accordance with R19-3-512.~~
- ~~B. If a request for quotations is issued for a purchase estimated to cost less than \$10,000, the Lottery shall include in it a notice that only small businesses as defined in R19-2-501(31) may respond. If a request for quotations requires written quotes, a bidder shall self-certify in its quote that it is a small business. If verbal quotes are accepted in response to a written request for quotations or if a bidder fails to certify in a written quote that it is a small business, the Lottery shall confirm before awarding a contract that the intended awardee is a small business. The Lottery shall presume that a bidder is a small business if it is registered on the State Procurement Office's prospective vendors list as a small business. The Lottery shall make a written notation in the contract file of this confirmation.~~
- ~~C. If a request for quotations is not issued, the Lottery shall verbally request confirmation that a bidder is a small business. The Lottery shall confirm before awarding a contract for a purchase that the intended awardee is a small business and~~

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shall make a written notation in the contract file of that confirmation.

- D.** The Lottery shall not determine a bidder's status as a small business under any of the following circumstances:
  - 1. Sole source procurements as defined in A.R.S. § 41-2536;
  - 2. Emergency procurements as defined in A.R.S. § 41-2537;
  - 3. Purchases not expected to exceed \$1,000;
  - 4. Purchases that have been unsuccessfully completed under subsections (B) and (C), including failure to obtain fair and reasonable prices.
- A.** The procurement officer shall issue a solicitation amendment to do any or all of the following:
  - 1. Make changes in the solicitation;
  - 2. Correct defects or ambiguities;
  - 3. Provide additional information or instructions; or
  - 4. Extend the offer due date and time if the procurement officer determines that an extension is in the best interest of the Lottery.
- B.** If a solicitation is changed by a solicitation amendment, the procurement officer shall notify suppliers to whom the procurement officer distributed the solicitation.
- C.** It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in the manner specified in the solicitation or solicitation amendment on or before the offer due date and time.

**R19-3-512. ~~Procurements Not Exceeding an Aggregate Amount of \$25,000~~ Modification or Withdrawal of Offer Before Offer Due Date and Time**

- A.** The Lottery shall make purchases estimated to cost from \$10,000 to \$25,000 in accordance with the following procedures:
  - 1. Conduct purchases in accordance with procedures prescribed in R19-3-509 and R19-3-510.
  - 2. The Lottery may use the State Procurement Office's electronic notification/distribution system, AZFACTS, in accordance with the following procedures:
    - a. Issue a request for quotations. The request for quotations shall be transmitted to the state procurement office's electronic/distribution system, AZFACTS.
    - b. Retain requests for quotations on the electronic notification/distribution system for at least 11 days.
    - c. Accept quotes from bidders on a form approved by the state procurement administrator and record and place the quotes in the procurement file.
    - d. Make the award to the responsible bidder submitting the quotation that is most advantageous to the Lottery and conforms to the solicitation.
    - e. If only one responsive quotation is received, include a statement in the contract file regarding the basis on which it was determined that the price is fair and reasonable. This determination may be based on a comparison of the proposed price with prices found reasonable on previous purchases or current price lists.
- B.** The Lottery may place purchases estimated to cost less than \$10,000 on the electronic notification/distribution system, AZFACTS, if the procedures in subsection (A)(2) are followed.
- C.** The Lottery may make purchases estimated to cost from \$5,001 to \$9,999 in accordance with the following procedures:
  - 1. If applicable under R19-3-511, accept bids from small businesses only.
  - 2. Solicit written quotations from at least three bidders.
  - 3. Solicit a quotation from any vendor who specifically requests to submit a quotation. The Lottery shall rotate the vendors solicited to the extent necessary to give all vendors a fair and equal opportunity to compete.
  - 4. Issue the request for quotations for a reasonable time as determined under the circumstances of each case.
  - 5. Accept quotes submitted in accordance with subsection (A)(2)(c).
  - 6. Make the award in accordance with subsection (A)(2)(d) and, if applicable, subsection (A)(2)(e).
- D.** The Lottery may make purchases estimated to cost from \$1,001 to \$5,000 in accordance with the following procedures:
  - 1. If applicable under R19-3-511, accept bids from small businesses only.
  - 2. Solicit verbal or written quotations from at least three bidders.
  - 3. Solicit a quotation from any vendor who specifically requests to submit a quotation. The Lottery shall rotate the vendors solicited to the extent necessary to give all vendors a fair and equal opportunity to compete.
  - 4. Record quotations and place in the procurement file a record sufficient to facilitate auditing of the purchasing process.
- E.** For purchases of \$1,000 or less, the Lottery shall use procedures that provide adequate and reasonable competition and make records that facilitate auditing the purchasing process.
- F.** To determine whether a multi-term contract is subject to this Section, the Lottery shall consider the total amount of the contract over the full term, including the amounts of any options to extend.
- A.** An offeror may modify or withdraw its offer, in writing, before the offer due date and time.
- B.** The procurement officer shall place the document submitted by the offeror in the procurement file as a record of the modification or withdrawal.

**R19-3-513. ~~Procurements Not Exceeding an Aggregate Amount of \$10,000~~ Cancellation of a Solicitation Before Offer Due Date and Time**

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If a procurement that does not exceed an aggregate dollar amount of \$10,000 is made with as much competition as is practicable under the circumstances, the Lottery shall exempt the procurement from the provisions of R19-3-509 and R19-3-510. The Lottery shall not artificially divide or fragment procurement requirements to constitute a purchase under this rule or to circumvent the source selection procedures required by R19-3-509 and R19-3-510.

- A. Based on the best interest of the Lottery, the procurement officer may cancel a solicitation before the offer due date and time.
- B. The procurement officer shall notify suppliers to whom the procurement officer distributed the solicitation.
- C. The procurement officer shall not open offers after cancellation. The procurement officer may discard the offer after 30 days from notice of solicitation cancellation, unless the offeror requests the offer be returned.

**R19-3-514. Sole Source Procurement Receipt, Opening, and Recording of Offers**

If the Director determines in writing that there is only one source for a required material or service item, the Lottery may award without competition a contract of any dollar amount for a procurement relating to the design and operation of the Lottery or the purchase of Lottery equipment, tickets, and related material. The Lottery shall avoid sole source procurement except when no reasonable alternative source exists. The Director shall prepare a written statement of the basis for the sole source determination and place the statement in the contract file.

- A. The procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The procurement officer shall store each unopened offer in a secure place until the offer due date and time.
- B. The Lottery may open an offer to identify the offeror. If this occurs, the procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The procurement officer shall secure the offer and retain it for public opening.
- C. The procurement officer shall open offers publicly, in the presence of one or more witnesses, after the offer due date and time. The procurement officer shall announce the name of the offeror; the amount of each offer; and any other relevant information as determined by the procurement officer. The procurement officer shall record the name of each offeror, and the amount of each offer. The reader and the witness shall sign the record of offers and place it in the procurement file. The procurement officer shall make the record of offers available for public viewing.
- D. Except for the information identified in subsection (C), the procurement officer shall ensure that information contained in the offer remains confidential until the contract becomes effective and binding and is shown only to those persons assisting in the evaluation process and the Lottery Commissioners, after award, and before the contract becomes effective and binding.

**R19-3-515. Emergency Procurements Late Offers, Modifications, Withdrawals**

Notwithstanding any other provisions of this Article, the Director shall authorize an emergency procurement if there exists a threat to public health, welfare, or safety or if a situation exists that makes compliance with R19-3-509 or R19-3-510 impracticable, unnecessary, or contrary to the public interest. The Lottery shall make an emergency procurement with as much competition as is practicable under the circumstances. The Director shall prepare a written statement of the basis for the emergency determination and for the selection of the particular contractor and place the statement in the contract file.

- A. If an offer, modification, or withdrawal is received after the due date and time, at the location designated in the solicitation, the procurement officer shall determine the offer, modification, or withdrawal as late.
- B. The procurement officer shall reject a late offer, modification, or withdrawal unless:
  1. The document is received before the contract award at the location designated in the solicitation; and
  2. The document would have been received by the offer due date and time, but for the action or inaction of Lottery personnel.
- C. Upon receiving a late offer, modification, or withdrawal, the procurement officer shall:
  1. If the document is hand delivered, refuse to accept delivery; or
  2. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.
- D. The procurement officer shall document a refusal under subsection (C)(1) and place the document or a copy of the notice required in subsection (C)(2) in the procurement file.

**R19-3-516. Cancellation of Invitation for Bids or Requests for Proposals Cancellation of Solicitation After Receipt of Offers and Before Award**

The Lottery shall cancel or reject an invitation for bids, a request for proposals, or other solicitation if it is in the best interests of the Lottery. A written statement of the reason for the cancellation or rejection shall be placed in the contract file.

- A. Based on the best interest of the Lottery, the procurement officer may cancel a solicitation after offer due date and time. The procurement officer shall prepare a written justification for cancellation and place it in the procurement file.
- B. The procurement officer shall notify offerors of the cancellation in writing.
- C. The procurement officer shall retain offers received under the canceled solicitation in the procurement file. If the Lottery intends to issue another solicitation within six months after cancellation of the procurement, the procurement officer shall

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withhold the offers from public inspection. After award of a contract under the subsequent solicitation, the procurement officer shall make offers submitted in response to the cancelled solicitation available for public inspection except for information determined to be confidential pursuant to R19-3-503.

**D.** In the event of cancellation, the procurement officer shall promptly return any bid security provided by an offeror.

**R19-3-517. Responsibility of Bidders and Offerors One Offer Received**

**A.** The Director shall determine that a bidder or offeror is responsible before awarding a contract to that bidder or offeror. If the Director determines that a prospective contractor is nonresponsible, the Director shall prepare a written statement of the basis for the determination and place the statement in the procurement file. A copy of the statement shall be promptly sent to the nonresponsible bidder or offeror. The unreasonable failure of a bidder or offeror to supply promptly information requested regarding responsibility shall be grounds for a determination of nonresponsibility. A bidder or offeror shall not construe a determination of nonresponsibility as a violation of the bidder's or offeror's rights.

**B.** The Director shall consider the following factors in determining whether a bidder or offeror is responsible:

1. The bidder's or offeror's financial, physical, personnel, and other resources, including subcontracts;
2. The bidder's or offeror's record of performance and integrity;
3. The bidder's or offeror's legal qualifications to contract with the Lottery;
4. The bidder's or offeror's responsiveness to requests for information concerning its responsibility; and
5. The bidder's or offeror's compliance with specific responsibility criteria in the solicitation.

**C.** The Director shall not disclose information furnished by a bidder or offeror under this Section without prior written consent by the bidder or offeror except to law enforcement agencies.

If only one offer is received in response to a solicitation, the procurement officer shall either:

1. Award the contract to the offeror and prepare a written determination that:
  - a. The price submitted is fair and reasonable under R19-3-547;
  - b. The offer is responsive; and
  - c. The offeror is responsible; or
2. Reject the offer and:
  - a. Resolicit for new offers;
  - b. Cancel the procurement; or
  - c. Use a different source selection method authorized under these rules.

**R19-3-518. Prequalification of Contractors Offer Mistakes Discovered After Offer Opening and Before Award**

**A.** A prospective contractor may be prequalified for particular types of materials, or services. A prequalified contractor shall provide the Director with information annually on any material change affecting the basis of prequalification. The Lottery shall include prequalified contractors on solicitation mailing lists of potential contractors.

**B.** A prospective contractor need not be prequalified to be awarded a contract. Prequalification does not represent a determination of responsibility.

**A.** If an apparent mistake in an offer, relevant to the award determination, is discovered after opening and before award, the procurement officer shall contact the offeror for written confirmation of the offer. The procurement officer shall designate a time-frame within which the offeror shall either:

1. Confirm that no mistake was made and assert that the offer stands as submitted; or
2. Acknowledge that a mistake was made, and include all of the following in a written response:
  - a. Explanation of the mistake and any other relevant information;
  - b. A request for correction including the corrected offer or a request for withdrawal; and
  - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.

**B.** An offeror who discovers a mistake in its offer may request correction or withdrawal in writing and shall include all of the following in the written request:

1. Explanation of the mistake and any other relevant information;
2. A request for correction including the corrected offer or a request for withdrawal; and
3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.

**C.** The procurement officer may permit an offeror to correct a mistake if the mistake and the intended offer are evident in the uncorrected offer; for example, an error in the extension of unit prices. The procurement officer shall not permit a correction that is prejudicial to the Lottery or fair competition.

**D.** The procurement officer shall permit an offeror to furnish information called for in the solicitation but not supplied if the intended offer is evident and submittal of the information is not prejudicial to other offerors.

**E.** The procurement officer shall make a written determination of whether correction or withdrawal is permitted, based on whether the action is consistent with fair competition and in the best interest of the Lottery.

**F.** If the offeror fails to act under subsection (A) the offeror is considered nonresponsive and the procurement officer shall place a written determination that the offeror is nonresponsive in the procurement file.

**R19-3-519. Bid and Contract Security Extension of Offer Acceptance Period**

The Director may require, in accordance with this Article, that a prospective contractor submit security to guarantee faithful bid and contract performance. To determine the amount and type of security required for each contract, the Director shall consider the nature of the performance and the need for future protection to the Lottery. The Lottery shall include the security requirement in the invitation for bids or request for proposals:

- A. To extend the offer acceptance period, the procurement officer shall notify all offerors in writing of an extension and request written concurrence from each offeror.
- B. To be eligible for a contract award, an offeror shall submit a written concurrence to the extension. The procurement officer shall reject an offer as nonresponsive if written concurrence is not provided as requested.

**R19-3-520. ~~Bid and Performance Bonds for Material or Service Contracts~~ Determination of Not Susceptible for Award**

- ~~A. If the Director deems it advisable to protect the interests of the Lottery, the Director shall require bid and performance bonds or other security for material or service contracts. Bond or other security requirements shall be stated in the solicitation. The Lottery shall not use bid or performance bonds as a substitute for a determination of bidder or offeror responsibility.~~
- ~~B. If a bid is withdrawn at any time before bid opening, the Lottery shall return any bid security to the bidder or offeror.~~
- A. The procurement officer may determine at any time during the evaluation period and before award that an offer is not susceptible for award. The procurement officer shall place a written determination, based on one or more of the following, in the procurement file:
  - 1. The offer fails to substantially meet one or more of the mandatory requirements of the solicitation;
  - 2. The offer fails to comply with any susceptibility criteria identified in the solicitation; or
  - 3. The offer is not within the competitive range in comparison to other offers based on the criteria set forth in the solicitation. When there is doubt as to whether an offer is in the competitive range, the offer should be included.
- B. The procurement officer shall promptly notify the offeror in writing of the final determination that the offer is not susceptible for award unless the procurement officer determines notification to the offeror would compromise the Lottery's ability to negotiate with other offerors.

**R19-3-521. ~~Cost or Pricing Data~~ Bid Evaluation**

- ~~A. The Director shall require a bidder or offeror to submit current cost or pricing data regarding a potential contract award if an analysis of the proposed price is essential to determine that the price is reasonable and fair. A bidder or offeror shall, except as provided in subsection (C), submit current cost or pricing data and certify that, to the best of the bidder's or offeror's knowledge and belief, the cost or pricing data submitted are accurate, complete, and current as of a mutually determined specified date before:~~
  - ~~1. The pricing of a contract awarded by competitive sealed proposals or under sole source procurement authority, if the total contract price is expected to exceed an amount established by this Article; or~~
  - ~~2. The pricing of a change order or contract modification that is expected to exceed an amount established by this Article.~~
- ~~B. A contract, change order, or contract modification for which a certification of cost or pricing data is required shall contain a provision that the price to the Lottery be adjusted to exclude any significant amounts by which the Lottery finds that the price is increased because the contractor furnished cost or pricing data were inaccurate, incomplete, or not current as of the date agreed on between the parties. The Lottery may include profit or fee in this adjustment.~~
- ~~C. The requirements of this Section need not be applied to contracts if any of the following apply:~~
  - ~~1. The contract price is based on adequate price competition;~~
  - ~~2. The contract price is based on established catalogue prices or market prices;~~
  - ~~3. The contract price is set by law or rule; or~~
  - ~~4. The Director determines in writing that it is in the best interests of the Lottery to waive the requirements of this Section and states in writing the reason for the waiver.~~
- ~~D. The Lottery shall execute a change order exceeding 5% of the contract amount or \$10,000, whichever is greater, only if the Director determines in writing that the change order is in the best interests of the Lottery.~~
- A. The procurement officer shall evaluate offers to determine which offer provides the lowest cost to the Lottery in accordance with any objectively measurable factors set forth in the solicitation. Examples of such factors include, but are not limited to, transportation cost, energy cost, ownership cost, and any other identifiable cost or life cycle cost formula. The factors need not be precise predictors of actual future costs, but to the extent possible the factors shall be reasonable estimates based upon information the procurement officer has available concerning future use.
- B. The procurement officer shall consider life cycle costs and application benefits when evaluating offers for the procurement of material or services information systems and telecommunication systems.
- C. The procurement officer shall conduct an evaluation to determine whether an offeror is responsive, based upon the requirements set forth in the solicitation. The procurement officer shall reject as nonresponsive any offer that does not meet the solicitation requirements.
- D. If there are two or more low, responsive offers from responsible offerors that are identical in price, the procurement officer

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shall make the award by drawing lots. If time permits, the procurement officer shall provide the offerors involved an opportunity to attend the drawing. The procurement officer shall ensure that the drawing is witnessed by at least one person other than the procurement officer.

**R19-3-522. Types of Contracts Clarification of Proposal Offers**

- A.** Except as provided in subsections (B) and (C), the Lottery may use any type of contract that promotes the best interests of the Lottery.
- B.** The Lottery shall not use a cost-plus-a-percentage-of-cost contract.
- C.** The Lottery shall use a cost-reimbursement contract only if the Director makes a written determination that this type of contract is the least costly to the Lottery.
- A.** The purpose for clarifications is to provide for a greater mutual understanding of the offer. Clarifications are not negotiations and material changes to the request for proposal or offer shall not be made by clarification.
- B.** The procurement officer may request clarifications from offerors at any time after receipt of offers. Clarifications may be requested orally or in writing. If clarifications are requested orally, the offeror shall confirm the request in writing. A request for clarifications shall not be considered a determination that the offeror is susceptible for award.
- C.** The procurement officer shall retain any clarifications in the procurement file.

**R19-3-523. Approval of Accounting System Proposal Negotiations with Responsible Offerors and Revisions of Offers**

The Lottery shall not use any contract type except a firm fixed price contract unless the Director makes a written determination that the proposed contractor's accounting system is adequate to allocate costs.

- A.** The procurement officer shall establish procedures and schedules for conducting negotiations. The procurement officer shall ensure there is no disclosure of one offeror's price or any information derived from competing offers to another offeror.
- B.** Negotiations may be conducted orally or in writing. If oral negotiations are conducted, the offeror shall confirm the negotiations in writing.
- C.** If negotiations are conducted, negotiations shall be conducted with all offerors determined to be in the competitive range or reasonably susceptible for award. Offerors may revise offers based on negotiations provided that any revision is confirmed in writing.
- D.** The procurement officer may conduct negotiations with responsible offerors to improve offers in such areas as cost, price, specifications, performance, or terms, to achieve best value for the Lottery based on the requirements and the evaluation factors set forth in the solicitation.
- E.** Responsible offerors determined to be susceptible for award, with which negotiations have been held, may revise their offer in writing during negotiations.
- F.** An offeror may withdraw an offer at any time before the final proposal revision due date and time by submitting a written request to the procurement officer.

**R19-3-524. Multi-term Contracts Final Proposal Revisions**

- A.** Unless otherwise provided by law, the Lottery may enter a contract for materials or services for as many as five years, as deemed by the Director to be in the best interests of the Lottery, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period of contracting. The Lottery may enter a contract for a period of time exceeding five years if the Director determines that:
  - 1. Estimated requirements for the material or service cover the period of the contract and are reasonable and continuing;
  - and
  - 2. The contract will serve the best interests of the Lottery by encouraging effective competition or otherwise promoting economies in Lottery procurement.
- B.** If monies are not available to support payment and performance obligations in a subsequent fiscal period, the Lottery shall cancel the contract and reimburse the contractor for only the reasonable value of nonrecurring costs incurred that are not amortized in the price of the materials or services delivered under the contract or that are not otherwise recoverable.
- A.** The procurement officer shall request written final proposal revisions from any offeror with whom negotiations have been conducted, unless the offeror has been determined not susceptible for award under R19-3-520 or non-responsible under R19-3-526. The procurement officer shall include in the written request:
  - 1. The date, time, and place for submission of final proposal revisions; and
  - 2. A statement that if offerors do not submit a written notice of withdrawal or a written final proposal revision, their immediate previous written proposal revision will be accepted as their final proposal revision.
- B.** The procurement officer shall request written final proposal revisions only once, unless the procurement officer makes a written determination that it is advantageous to the Lottery to conduct further negotiations or change the Lottery's requirements.
- C.** If an apparent mistake, relevant to the award determination, is discovered after opening of final proposal revisions, the procurement officer shall contact the offeror for written confirmation. The procurement officer shall designate a time-frame within which the offeror shall either:

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1. Confirm that no mistake was made and assert that the offer stands as submitted; or
  2. Acknowledge that a mistake was made, and include the following in a written response:
    - a. Explanation of the mistake and any other relevant information;
    - b. A request for correction including the corrected offer or a request for withdrawal; and
    - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.
- D.** An offeror who discovers a mistake in their final proposal revision may request withdrawal or correction in writing, and shall include the following in the written request:
1. Explanation of the mistake and any other relevant information;
  2. A request for correction including the corrected offer or a request for withdrawal; and
  3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.
- E.** In response to a request made under subsections (C) or (D), the procurement officer shall make a written determination of whether correction or withdrawal will be allowed based on whether the action is consistent with fair competition and in the best interest of the Lottery. If an offeror does not provide written confirmation of the final proposal revision, the procurement officer shall make a written determination that the most recent written proposal revision submitted is the final proposal revision.

**R19-3-525. Right to Inspect Plant Evaluation of Proposal Offers**

A contractor and any subcontractor shall make available for inspection by the Lottery, at reasonable times, any part of the contractor's or subcontractor's plant or place of business that is related to the performance of any contract awarded or to be awarded by the Director.

- A.** The procurement officer shall evaluate offers and final proposal revisions based on the evaluation criteria contained in the request for proposals. The procurement officer shall not modify evaluation criteria or their relative order of importance after offer due date and time.
- B.** The procurement officer may appoint an evaluation committee to assist in the evaluation of offers. If offers are evaluated by an evaluation committee, the evaluation committee shall prepare an evaluation report for the procurement officer. The procurement officer may:
  1. Accept or reject the findings of the evaluation committee;
  2. Request additional information from the evaluation committee; or
  3. Replace the evaluation committee.
- C.** The procurement officer shall prepare an award determination and place the determination, including any evaluation report or other supporting documentation, in the procurement file.

**R19-3-526. Right to Audit Records Responsibility Determinations**

A person who submits cost or pricing data as provided in R19-3-521 shall make available to the Lottery for audit, at reasonable times and places, books and records that relate to performance of a contract or subcontract. Books and records shall be maintained by the contractor for five years from the date of final payment under the prime contract and by the subcontractor for three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the Director.

- A.** The procurement officer shall determine before an award whether an offeror is responsible or nonresponsible.
- B.** The procurement officer shall consider the following factors before determining that an offeror is responsible or nonresponsible:
  1. The offeror's financial, business, personnel, or other resources, such as subcontractors;
  2. The offeror's record of performance and integrity;
  3. Whether the offeror has been debarred or suspended;
  4. Whether the offeror is legally qualified to contract with the Lottery;
  5. Whether the offeror promptly supplied all requested information concerning its responsibility; and
  6. Whether the offeror meets the responsibility criteria specified in the solicitation.
- C.** If the procurement officer determines an offeror is nonresponsible, the procurement officer shall promptly send a determination to the offeror stating the basis for the determination. The procurement officer shall file a copy of the determination in the procurement file.
- D.** The procurement officer shall only disclose responsibility information furnished by an offeror in accordance with A.R.S. § 41-2540.
- E.** For the offeror awarded a contract, the procurement officer's signature on the contract constitutes a determination that the offeror is responsible.

**R19-3-527. Reporting of Anticompetitive Practices Bid Contract Award**

A person who suspects collusion or other anticompetitive practice by a bidder or offeror shall transmit notice of the relevant facts to the Director and the Attorney General. A law enforcement agency conducting an investigation into an anticompetitive practice is not required to notify to the Director.

- A.** The procurement officer shall award the contract to the lowest responsible and responsive offeror whose offer conforms in

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all material respects to the requirements and criteria set forth in the solicitation. Unless otherwise provided in the solicitation, an award may be made for an individual line item, any group of line items, or all line items.

- B. The procurement officer shall keep a record showing the basis for determining the successful offeror or offerors in the procurement file.
- C. The procurement officer shall notify the Director and the Lottery Commission of an award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to all offerors.
- D. After an award becomes effective and binding, the procurement officer shall return any bid security provided by the offeror.
- E. Within 10 days after an award is effective and binding, the procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R19-3-503.

**R19-3-528. Anticompetitive Practices among Bidders or Offerors Proposal Contract Award**

A bidder or offeror shall certify that the bid or offer submitted does not involve collusion or other anticompetitive practice.

- A. The procurement officer shall award the contract to the responsible offeror whose offer is determined to be most advantageous to the Lottery based on the evaluation factors set forth in the solicitation. The procurement officer shall make a written determination explaining the basis for the award and place it in the procurement file.
- B. Before awarding any cost reimbursement contract, the procurement officer shall determine in writing that:
  - 1. The offeror's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated, and
  - 2. It is adequate to allocate costs under R19-3-547 through R19-3-550.
- C. The procurement officer shall notify the Director and the Lottery Commission of an award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to all offerors.
- D. If the procurement officer makes a written determination that it is in the best interest of the Lottery that the award not be made public until reviewed by the Lottery Commission, the Director may authorize a meeting of the Lottery Commission to be held for consideration of the award.
  - 1. The Director shall provide notice of the meeting in compliance with Open Meeting Law, including notice of an executive session to provide information concerning the award and the procurement officer's evaluation of the offers.
  - 2. The Lottery Commission shall not take action in the executive session.
  - 3. In open meeting the Lottery Commission may vote to approve or reject the award. The Lottery Commission may also direct that it will reject the award unless further negotiations occur regarding specified issues. If further negotiations are directed, the procurement officer shall withhold the recommended award from public inspection.
- E. The procurement officer shall notify all offerors of an award that has become effective and binding.
- F. After a contract award becomes effective and binding, the procurement officer shall return any offer security provided by the offeror.
- G. Within 10 days after contract award the procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R19-3-503.

**R19-3-529. Retention of Procurement Records Mistakes Discovered After Bid Award**

The Lottery shall retain and dispose of all procurement records in accordance with records retention guidelines and schedules approved by the Department of Library, Archives, and Public Records.

- A. If a mistake in the offer is discovered after the award, the offeror may request withdrawal or correction in writing and shall include all of the following in the written request:
  - 1. Explanation of the mistake and any other relevant information;
  - 2. A request for correction including the corrected offer or a request for withdrawal; and
  - 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.
- B. Based on the considerations of fair competition and the best interest of the Lottery, the procurement officer may:
  - 1. Allow correction of the mistake, if the resulting dollar amount of the correction is less than the next lowest offer;
  - 2. Cancel all or part of the award; or
  - 3. Deny correction or withdrawal.
- C. After cancellation of all or part of an award, if the offer acceptance period has not expired, the procurement officer may award all or part of the contract to the next lowest responsible and responsive offeror, based on the considerations of fair competition and the best interest of the Lottery.

**R19-3-530. Record of Procurement Actions Mistakes Discovered After Proposal Award**

The Director shall maintain a record of all contracts in excess of \$10,000 made under R19-3-514 or R19-3-515 for a minimum of five years. The record shall contain:

- 1. Each contractor's name;
- 2. The amount and type of each contract; and
- 3. A listing of the materials or services procured under each contract.

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- A. If a mistake in the offer is discovered after the award, the offeror may request correction or withdrawal in writing, and shall include all of the following in the written request:
  - 1. Explanation of the mistake and any other relevant information;
  - 2. A request for correction including the corrected offer or a request for withdrawal; and
  - 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.
- B. Based on the considerations of fair competition and the best interest of the Lottery, the procurement officer may:
  - 1. Allow correction of the mistake;
  - 2. Cancel all or part of the award; or
  - 3. Deny correction or withdrawal.
- C. After cancellation of all or part of an award, if the offer acceptance period has not expired, the procurement officer may award all or part of the contract to the next responsible offeror whose offer is determined to be the next most advantageous to the Lottery according to the evaluation factors contained in the solicitation.

**R19-3-531. Content of Specifications Procurements not Exceeding the Amount Prescribed in A.R.S. § 41-2535**

- A. A specification may provide alternative descriptions of material or service items if two or more design, functional, or performance criteria will satisfactorily meet the Lottery's requirements.
- B. To the extent practicable, the Lottery shall not include any solicitation or contract term or condition in a specification.
- C. The Lottery shall emphasize functional or performance criteria in a specification. To facilitate the use of these criteria, the Lottery shall use reasonable efforts to include the principal functional or performance requirements as a part of its purchase requisitions.

For purchases not exceeding the amount prescribed in A.R.S. § 41-2535, the procurement officer shall issue a request for quotation under R19-3-533 unless any of the following apply:

- 1. The purchase can be made from a state or agency contract;
- 2. The purchase can be made from a set-aside organization as established in A.R.S. § 41-2636;
- 3. The purchase is not expected to exceed \$5,000.00;
- 4. The purchase is made as a sole-source procurement;
- 5. The procurement officer makes a written determination that competition is not practicable under the circumstances. The purchase shall be made with as much competition as is practicable under the circumstances;

**R19-3-532. Types of Specifications Solicitation – Request for Quotation**

- A. To the extent practicable, the Lottery shall prepare and use a specification for a common or general use item if:
  - 1. A material or service item is used repeatedly, the characteristics of the material or service item, as commercially produced or provided, remain relatively stable, and the frequency or volume of procurement is significant;
  - 2. The Lottery's recurring needs require uniquely designed or specially produced items; or
  - 3. The Lottery finds it to be in the best interests of the Lottery.
- B. The Lottery may use a brand name or equal specification if the Director determines in writing that use of a brand name or equal specification is in the best interests of the Lottery and that:
  - 1. No specification for a common or general use item or qualified products list is available;
  - 2. Time does not permit the preparation of a form of specification other than a brand name specification; or
  - 3. The nature of the product or the Lottery's requirements make use of a brand name or equal specification suitable for the procurement.
- C. In any brand name or equal specification, the Lottery shall designate as many different brands as are practicable as "or equal" references. The Lottery shall explain in each solicitation that uses a brand name or equal specification that use of a brand name is to describe the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to the brands designated qualify for consideration.
- A. A request for quotation shall be issued for purchases estimated to exceed \$5,000 but less than that specified in A.R.S. § 41-2535. The procurement officer shall include the following in the solicitation:
  - 1. Offer submission requirements, including offer due date and time, where offers will be received, and offer acceptance period;
  - 2. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
  - 3. The minimum information that the offer shall contain;
  - 4. Any evaluation factors;
  - 5. Whether negotiations may be held;
  - 6. Any contract options including renewal or extension;
  - 7. The uniform terms and conditions by text or reference; and
  - 8. Any other terms, conditions, or instructions specific to the procurement.
- B. The request for quotation shall include a statement that only a small business, as defined in R19-3-501, shall be awarded a contract, unless any of the following apply:

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1. The purchase has been unsuccessfully competed under R19-3-533, including failure to obtain fair and reasonable prices; or
2. The procurement officer has made a written determination that restricting the procurement to small business is not practical under the circumstances.

**R19-3-533. Confidentiality Request for Quotation Issuance**

~~The Lottery shall make available for public inspection every specification, and written determination or other document generated or used to develop the specification, unless withholding this information is permitted by law and required by the Director. The procurement officer shall issue the request for quotation by one of these methods:~~

1. Post the request for quotation on the state procurement office's centralized electronic system indicating the date that offers are due. The request for quotation shall be posted for a reasonable time as determined by the procurement officer based on the needs of the Lottery.
2. Distribute the request for quotation to a minimum of three small businesses. The procurement officer shall rotate suppliers invited to submit quotations and shall invite at least one small minority- or small women-owned business enterprise to submit a quote. If the procurement officer is unable to locate a small minority- or small women-owned business enterprise, the procurement officer shall document in the procurement file.
3. The procurement officer may cancel the request for quotation at any time by making a written determination that cancellation is advantageous to the Lottery.

**R19-3-534. Maximum Practicable Competition Quotation Contract Award**

~~All specifications shall:~~

1. ~~Seek to promote overall economy for the purpose intended;~~
2. ~~Encourage competition in satisfying the Lottery's needs; and~~
3. ~~Not be unduly restrictive.~~

- A.** If only one responsive offer is received, the procurement officer shall explain in writing whether award of the contract is advantageous to the Lottery and place the determination in the procurement file.
- B.** The procurement officer shall award a contract to the small business determined to be most advantageous to the Lottery in accordance with any evaluation factors identified in the request for quotation.
- C.** The procurement officer shall notify the Director and the Lottery Commission of an award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to all offerors.
- D.** The procurement officer shall make the procurement file available to the public on the date the contract award becomes final and binding.

**R19-3-535. Requirements of Nonrestrictiveness Sole Source Procurements**

~~**A.** Nonexclusive specifications:~~

1. ~~To the extent practicable and unless otherwise permitted by this Article, the Lottery shall describe its requirements in a specification in a manner that does not unnecessarily exclude a material or service.~~
2. ~~The Lottery shall not use proprietary specifications unless the Director determines in writing that the specifications are required by demonstrable technological justification and that it is not practicable or advantageous to use a less restrictive specification. Past success in a material's performance, traditional purchasing practices, and inconvenience of drawing specifications does not justify the use of a proprietary specification.~~

~~**B.** The Lottery shall use accepted commercial specifications and procure standard commercial materials.~~

~~**A.** For the purposes of this Section, the term "sole-source procurement" means a material or service procured without competition when:~~

1. There is only a single source for the material or service; or
2. No reasonable alternative source exists.

~~**B.** The procurement officer shall make a written determination that includes the following information:~~

1. A description of the procurement need and the reason why there is only a single source available or no reasonable alternative exists;
2. The name of the proposed supplier;
3. The duration and estimated total dollar value of the proposed procurement;
4. Documentation that the price submitted is fair and reasonable pursuant to R19-3-547; and
5. A description of efforts made to seek other sources.

~~**C.** The procurement officer shall post the request on the Lottery web site and the state procurement office web site and invite comments on the sole-source request for five working days. Following this period, the procurement officer shall either:~~

1. Issue a written determination with any conditions or restrictions;
2. Retract the determination if input or information received shows that more than one source is available or a reasonable alternative source exists for the procurement need.

~~**D.** If the sole-source procurement is determined, the procurement officer shall negotiate a contract advantageous to the Lottery.~~

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- E. The procurement officer shall notify the Director and the Lottery Commission of a contract award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to the sole source.
- E. The procurement officer shall keep a record of all sole-source procurements.

**R19-3-536. Preparation of Specifications by Persons Other than State Personnel Emergency Procurements**

The Director may enter into a contract to have a specification or plan for a Lottery contract prepared by a person other than state personnel. The contract shall provide that the requirements of this Article apply to all specifications or plans prepared by persons other than state personnel.

- A. For the purposes of this Section, the term “emergency” means any condition creating an immediate and serious need for materials, services, or construction in which the Lottery’s best interests are not met through the use of other source-selection methods. The condition must seriously threaten the functioning of the Lottery, the preservation or protection of property, or the health or safety of a person.
- B. This Section applies to only emergency procurements, estimated to exceed the amount prescribed in A.R.S. § 41-2535. The procurement officer may procure a material or service without competition when there is an emergency by complying with this Section.
- C. A Lottery employee with the approval of the immediate supervisor or the Director may proceed with an emergency procurement without approval from the procurement officer if the emergency necessitates immediate response and it is impracticable to contact the procurement officer. The supervisor or Director shall submit a written confirmation of the emergency procurement to the procurement officer within five working days of the emergency.
- D. An emergency procurement shall be limited to such actions necessary to address the emergency.
- E. An emergency procurement shall employ maximum competition, given the circumstances, to protect the interests of the Lottery.
- F. The procurement officer shall keep a record of all emergency procurements.

**R19-3-537. Conflicts of Interest Competition Impracticable Procurements**

- ~~A. A person preparing or assisting in the preparation of a specification, plan, or scope of work shall not receive any direct or indirect benefit from the use of the specification, plan, or scope of work.~~
- ~~B. The Director shall approve or disapprove all specifications.~~
- A. For the purposes of this Section, “competition impracticable” means a procurement requirement exists which makes compliance with A.R.S. § 5-509 and these rules impracticable, unnecessary, or contrary to the public interest, but which is not an emergency under R19-3-536.
- B. The procurement officer shall make a written determination for approval containing the following:
  - 1. An explanation of the competition impracticable need and the unusual or unique situation that makes compliance with A.R.S. § 5-509 and these rules impracticable, unnecessary, or contrary to the public interest;
  - 2. A definition of the proposed procurement process to be utilized and an explanation of how this process will foster as much competition as is practicable;
  - 3. An explanation of why the proposed procurement process is advantageous to the Lottery; and
  - 4. The scope, duration, and estimated total dollar value of the procurement need.
- C. The procurement officer shall keep a record of all competition impracticable procurements.

**R19-3-538. Filing of a Protest Request for Information**

- ~~A. An interested party may protest a solicitation issued by the Lottery, a proposed award, or the award of a contract.~~
- ~~B. A protest shall be in writing and include the following information:~~
  - ~~1. The name, address, and telephone number of the protester;~~
  - ~~2. The signature of the protester or its representative;~~
  - ~~3. Identification of the solicitation or contract number;~~
  - ~~4. A detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and~~
  - ~~5. The form of relief requested.~~

The procurement officer may issue a request for information to obtain price, delivery, technical information or capabilities for planning purposes.

- 1. Responses to a request for information are not offers and cannot be accepted to form a binding contract.
- 2. To the extent allowed by law, information contained in a response to a request for information may be considered confidential until the procurement process is concluded or two years, whichever occurs first.
- 3. There is no required format to be used for requests for information.

**R19-3-539. Time for Filing Protest Demonstration Projects**

- ~~A. Protests concerning improprieties in a solicitation:~~
  - ~~1. A person who protests an alleged impropriety in a solicitation that is apparent before the bid opening shall file the protest before bid opening. A person who protests an alleged impropriety in a solicitation that is apparent before the closing date for receipt of initial proposals shall file the protest before the closing date for receipt of initial proposals.~~

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- 2. A person who protests an alleged impropriety in a request for proposals regarding a procurement that does not exist in the initial solicitation but is subsequently incorporated into the solicitation shall file the protest by the next closing date following the incorporation.
- B.** A person whose protest is not covered in subsection (A), shall file the protest within 10 days after the person knows or should have known the basis of the protest, whichever is earlier.
- C.** When a protest is filed, the Procurement Officer shall immediately give written notice of the protest to the successful contractor if an award has been made or to all interested parties if no award has been made.
- A.** The procurement officer may award a contract for a demonstration project. The written determination shall contain the following:
  - 1. Name of the contractor;
  - 2. Description of the project, including unique and innovative features of the project;
  - 3. Statement and explanation that the project is in best interest of the Lottery;
  - 4. Duration of the project; and
  - 5. Proposed contract terms and conditions.
- B.** Demonstration projects shall be provided by the contractor at no cost and the Lottery shall not be obligated to purchase or lease the services or materials from the contractor.
- C.** The procurement officer may purchase or lease from the demonstration contractor within 12 months after the demonstration project begins or within 12 months after the demonstration project ends by making a written determination that contains the following:
  - 1. Name of the contractor;
  - 2. Description of the project, including unique and innovative features of the project;
  - 3. Statement and explanation that lease or purchase is in best interest of the Lottery;
  - 4. Cost to the Lottery;
  - 5. Duration of the proposed contract; and
  - 6. Proposed contract terms and conditions.
- D.** The term of the contract resulting from a demonstration project shall not exceed two years.

**R19-3-540. Stay of Procurement During Protest General Services Administration Contracts**

If a protest is filed before an award of a contract or before performance of a contract has begun, the award may be made or contract performance may proceed, unless the Procurement Officer stays the contract award or performance after making a written determination that there is a probability the protest will be sustained or a stay is not contrary to the best interests of the Lottery.

- A.** The procurement officer may purchase products or services using General Services Administration (GSA) schedules or contracts under the following conditions:
  - 1. Use of the GSA contract or schedule is cost effective and in the best interest of the Lottery;
  - 2. Price is equal to or less than the contractor's current GSA price;
  - 3. Price is fair and reasonable;
  - 4. Contractor is willing to offer GSA pricing and terms to the Lottery;
  - 5. Comparable products or services are not available under a state or agency contract;
  - 6. Comparable products or services are not restricted under a set-aside contract; and
  - 7. Contractor accepts required Lottery contract terms and conditions.
- B.** The procurement officer shall make a written determination that use of the GSA contract or schedule is in the best interest of the Lottery. The determination shall contain the following:
  - 1. Name of the contractor;
  - 2. GSA contract or schedule number;
  - 3. Procurement description;
  - 4. Analysis of price, quality, and other relevant factors; and
  - 5. Statement that the price is fair and reasonable.

**R19-3-541. Confidential Information Contract Clauses**

If a protester believes a protest contains material that should be withheld from the public, the protester shall advise the Procurement Officer of this fact in a statement submitted with the protest.

The procurement officer shall include in solicitations and contracts all contract clauses necessary to ensure the Lottery's interests are addressed.

**R19-3-542. Decision by the Procurement Officer Assignment of Rights and Duties**

- A.** The Procurement Officer shall issue a written decision within 14 days after a protest is filed. The decision shall contain an explanation of the factual and legal basis of the decision.
- B.** The Procurement Officer shall furnish a copy of the decision to the protester by any method that provides evidence of receipt.
- C.** The time limit for decisions under subsection (A) may be extended by the Procurement Officer for good cause for a rea-

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sonable time not to exceed 30 days. The Procurement Officer shall notify the protester in writing that the time for issuance of a decision has been extended and the date by which a decision will be issued.

- D.** If the Procurement Officer fails to issue a decision within the time limits set in subsection (A) or (C), the protester may proceed as if the Procurement Officer had issued an adverse decision.

A contractor shall not assign or transfer the rights or duties of a Lottery contract without the written consent of the Director.

**R19-3-543. Remedies Change of Name**

- A.** If the Procurement Officer sustains the protest in whole or in part and determines that a solicitation, proposed contract award, or contract award does not comply with A.R.S. § 5-509 or this Article, the Procurement Officer shall implement an appropriate remedy.

- B.** In determining an appropriate remedy, the Procurement Officer shall consider all of the circumstances surrounding the procurement or proposed procurement including:

1. The seriousness of the procurement deficiency;
2. The degree of prejudice to other interested parties or to the integrity of the procurement system;
3. The good faith of the parties;
4. The extent of performance;
5. The costs to the Lottery;
6. The urgency of the procurement; and
7. The impact of the relief on the Lottery's mission.

- C.** An appropriate remedy may include one or more of the following:

1. Decline to exercise an option to renew under the contract;
2. Terminate the contract;
3. Amend the solicitation;
4. Issue a new solicitation;
5. Award a contract consistent with A.R.S. § 5-509 and this Article; or
6. Implement other relief determined necessary to ensure compliance with A.R.S. § 5-509 and this Article.

If a contractor requests to change the name in which it holds a Lottery contract, the procurement officer may, upon receipt of a document indicating name change and any other information requested by the procurement officer in the best interest of the Lottery concerning the name change, enter into a written amendment with the contractor to effect the name change. The amendment shall provide that no other terms and conditions of the contract are changed.

**R19-3-544. Appeals to Protest Decisions to the Director Contract Change Orders and Amendments**

- A.** A person who appeals a decision entered or deemed to be entered by the Procurement Officer on a protest shall file the appeal with the Director within five days after the date the decision is received.

- B.** Content of appeal. An appeal shall contain:

1. The information required by R19-3-538(B), including identification of protected information in the manner described in R19-3-541;
2. A copy of the decision of the Procurement Officer; and
3. The asserted factual or legal error in the decision from which the appeal is taken.

- C.** The Director shall immediately give written notice of an appeal to all interested parties.

- D.** The Director shall refer an appeal of a decision on a protest to the Office of Administrative Hearings for disposition. Upon receipt of the findings of fact, conclusion of law, and decision of the Administrative Law Judge, the Director shall determine whether a conflict exists between the interests of the appellant and the Lottery. If the Director determines a conflict exists, the Director shall decline to review the decision of the Administrative Law Judge and in accordance with A.R.S. § 41-1092.08(B), allow the Administrative Law Judge's decision to become final.

- A.** The procurement officer may extend or authorize options in a contract provided the price of the extension or option was evaluated under the contractor's original offer.

- B.** Any contract change order or amendment not covered under subsection (A) that exceeds \$100,000 may be executed only if the procurement officer determines in writing that the change order or amendment is advantageous to the Lottery and the price is determined fair and reasonable pursuant to R19-3-547.

- C.** The procurement officer may, in situations in which time or economic considerations preclude re-solicitation, negotiate a reduction to the contract, including scope, price, and contract requirements in accordance with A.R.S. § 41-2537.

**R19-3-545. Stay of Procurement During Appeal Multi-term Contracts**

If a stay is issued under R19-3-540, the filing of an appeal shall automatically continue the stay unless the Director makes a written determination that the award of a contract without delay is necessary to protect substantial interests of the state.

- A.** Unless otherwise provided by law, a contract may be entered into for a period of time up to five years, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting.

- B.** A contract may be entered into for a period exceeding five years if the procurement officer makes a written determination that such a contract would be advantageous to the Lottery. The written determination shall include:

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1. The initial and renewal option periods for the contract;
  2. Documentation that the estimated requirements are reasonable and continuing;
  3. Documentation that such a contract will serve the best interests of the Lottery by encouraging effective competition or otherwise promoting economies in Lottery procurement.
- C.** The procurement officer shall include in all multi-term contracts a clause specifying that the contract shall be cancelled if monies are not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal year. If the contract is cancelled under this Section, the contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the materials or services delivered under the contract or which are otherwise not recoverable.

**R19-3-546. Dismissal Before Hearing Terms and Conditions**

The Director shall dismiss an appeal before scheduling a hearing if the Director makes a written determination that the appeal does not state a valid basis for protest or is untimely under R19-3-544(A).

- A.** The procurement officer shall use the uniform terms and conditions published by the state procurement administrator for state contracts.
- B.** The procurement officer may make changes to uniform terms and conditions by making a written determination that it is in the best interest of the Lottery and does not conflict with any statutory requirements.

**R19-3-547. Commission's Rejection of Award Determination of Fair and Reasonable Price**

If a stay of procurement is issued under R19-3-540, a person shall not request, under A.R.S. § 5-509(C), that the Commission reject an award made by the Director, until a final decision on any appeal has been made by the Director and the award communicated to the Commission.

- A.** For contracts or contract modifications that exceed \$100,000, the procurement officer shall determine in writing that the price is fair and reasonable only when one of the following requirements is met:
1. The contract or modification is based on adequate price competition;
  2. Price is supported by an established catalog or market prices;
  3. Price is set by law or rule; or
  4. Price is supported by relevant, historical price data.
- B.** The procurement officer shall request the submission of cost or pricing data from the offeror or contractor when:
1. The procurement officer cannot determine the price is fair and reasonable based on the criteria in subsection (A); or
  2. The procurement officer determines in writing that it is in the best interest of the Lottery regardless of the amount of the contract or contract modification.

**R19-3-548. Contract Claims Submission and Certification of Cost or Pricing Data**

- A.** ~~A person who has a contract claim shall file the claim with the Procurement Officer within 12 months after claim arises.~~
- B.** ~~The Procurement Officer shall settle and resolve all contract claims in accordance with R19-3-549.~~
- A.** The offeror or contractor shall submit certified cost or pricing data in the manner, and within the time-frames, prescribed by the procurement officer.
- B.** The offeror or contractor shall keep all cost or pricing data submitted current until the negotiations are concluded.
- C.** The offeror or contractor shall certify cost or pricing data by including a signed statement with the submission that all data is accurate, complete, and current to the best of the offeror's or contractor's knowledge and belief as of a date mutually determined with the procurement officer.

**R19-3-549. Resolution of Contract Claims Refusal to Submit Cost or Pricing Data**

- A.** ~~If a contract claim cannot be resolved by agreement of the parties, the Procurement Officer shall, upon a written request by the contractor, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the Procurement Officer shall review the facts pertinent to the contract claim and secure any necessary assistance from legal, fiscal, and other advisors.~~
- B.** ~~The Procurement Officer shall furnish a copy of the decision to the contractor by any method that provides evidence of receipt. The decision shall include:~~
1. ~~A description of the contract claim;~~
  2. ~~A reference to the pertinent contract provision;~~
  3. ~~A statement of the factual areas of agreement or disagreement;~~
  4. ~~A statement of the Procurement Officer's decision, with supporting rationale; and~~
  5. ~~A paragraph substantially as follows: "This is the final decision of the Procurement Officer. This decision may not be appealed to the Commission".~~
- C.** ~~The time limit for decisions under subsection (A) may be extended for good cause for a reasonable time not to exceed 30 days. The Procurement Officer shall notify the contractor in writing that the time for issuance of a decision has been extended and the date by which a decision will be issued.~~
- D.** ~~If the Procurement Officer fails to issue a decision within 60 days after a request is filed or within the time prescribed under subsection (C), the contractor may proceed as if the Procurement Officer had issued an adverse decision.~~

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- A. If an offeror fails to submit cost or pricing data in the required form and within the time-frames required, the procurement officer may reject the offer.
- B. If a contractor fails to submit data to support a contract modification in the form required and within the time-frames required, the procurement officer may:
  - 1. Reject the contract modification; or
  - 2. Set the amount of the contract modification subject to the contractor's rights under A.R.S. Title 41, Chapter 6, Article 10.

**R19-3-550. Appeals of Contract Claim Decisions to the Director Defective Cost or Pricing Data**

- A. A person who appeals a decision of the Procurement Officer on a contract claim shall file the appeal with the Director within five days from the date the decision is received.
- B. Content of appeal. An appeal shall contain a copy of the decision of the Procurement Officer and the asserted factual or legal error in the decision from which an appeal is taken.
- C. The Director shall refer an appeal of a decision on a contract claim to the Office of Administrative Hearings for disposition. Upon receipt of the findings of fact, conclusions of law, and decision of the Administrative Law Judge, the Director shall determine whether a conflict exists between the interests of the appellant and the Lottery. If the Director determines a conflict exists, the Director shall decline to review the decision of the Administrative Law Judge and in accordance with A.R.S. § 41-1092.08(B), allow the Administrative Law Judge's decision to become final.
- A. The procurement officer may reduce the contract price if, upon written determination, the cost or pricing data is defective.
- B. The procurement officer shall reduce the contract price in the amount of the defect plus related overhead and profit or fee, if the defective data was used in awarding the contract or contract modification.
- C. The offeror or contractor may appeal any dispute regarding the existence of defective cost or pricing data or the amount of an adjustment due to defective cost or pricing data as a contract claim under R19-3-551 through R19-3-559. The price, as adjusted by the procurement officer, shall remain in effect until any claim is settled or resolved under A.R.S. Title 41, Chapter 6, Article 10.

**R19-3-551. Debarment and Suspension of Contractors Protest of Solicitations and Contract Awards**

~~Suspension or debarment of a person from consideration for award of contract under this Article shall be governed by A.R.S. § 41-2613, except that reference to "Director" means the Executive Director of the State Lottery.~~

- A. Any interested party may protest a solicitation, a determination of not susceptible for award, or the award of a contract.
- B. The interested party shall file the protest in writing with the procurement officer and shall include the following information:
  - 1. The name, address, and telephone number of the interested party;
  - 2. The signature of the interested party or the interested party's representative;
  - 3. Identification of the solicitation or contract number;
  - 4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
  - 5. The form of relief requested.
- C. If the protest is based upon alleged improprieties in a solicitation that are apparent before the offer due date and time, the interested party shall file the protest before the offer due date and time.
- D. In cases other than those covered in subsection (C), the interested party shall file the protest within 10 days after the procurement officer makes the procurement file available for public inspection.
- E. The interested party may submit a written request to the procurement officer for an extension of the time limit for protest filing set forth in subsection (D). The written request shall be submitted before the expiration of the time limit set forth in subsection (D) and shall set forth good cause as to the specific action or inaction of the Lottery that resulted in the interested party being unable to submit the protest within the 10 days. The procurement officer shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted set forth a new date for submission of the filing.
- F. If the interested party shows good cause, the procurement officer may consider a protest that is not timely filed.
- G. The procurement officer shall immediately give notice of a protest to all offerors.

**R19-3-552. Exclusive Remedy Stay of Procurements During the Protest**

~~This Article provides the exclusive procedure for asserting a claim against the Lottery arising from any procurement conducted under this Article.~~

- A. If a protest is filed before the solicitation due date, before the award of a contract, or before performance of a contract has begun, the procurement officer shall make a written determination to either:
  - 1. Proceed with the award or contract performance; or
  - 2. Stay all or part of the procurement if there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the Lottery.
- B. The procurement officer shall provide the interested party and other interested parties with a copy of the written determination.

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**R19-3-553. Resolution of Solicitation and Contract Award Protests**

- A.** The procurement officer has the authority to resolve a protest.
- B.** The procurement officer shall issue a written decision within 14 days after a protest has been filed under R19-3-551. The decision of the procurement officer shall contain the factual and legal basis for the decision and a statement that the decision of the Lottery may be appealed as an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10 within 30 days from receipt of the decision.
- C.** The procurement officer shall furnish the decision to the interested party, by certified mail, return receipt requested, or by any other method that provides evidence of receipt and provide a copy to the Director.
- D.** The time limit for decisions under subsection (B) may be extended for good cause by a written determination. The extension shall not exceed an additional 30 days. The procurement officer shall notify the interested party in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
- E.** If the procurement officer fails to issue a decision within the time limits set forth in this Article, the interested party may proceed as if the procurement officer had issued an adverse decision.

**R19-3-554. Remedies by the Procurement Officer**

- A.** If the procurement officer sustains a protest in whole or part and determines that a solicitation, a determination of not susceptible for award, or contract award does not comply with the procurement statutes and regulations, the procurement officer shall implement an appropriate remedy.
- B.** In determining an appropriate remedy, the procurement officer shall consider all the circumstances surrounding the procurement or proposed procurement including:
  - 1. The seriousness of the procurement deficiency;
  - 2. The degree of prejudice to other interested parties or to the integrity of the procurement system;
  - 3. The good faith of the parties;
  - 4. The extent of performance;
  - 5. The costs to the Lottery;
  - 6. The urgency of the procurement;
  - 7. The impact on the agency's mission; and
  - 8. Other relevant issues.
- C.** The procurement officer may implement any of the following appropriate remedies:
  - 1. Decline to exercise an option to renew under the contract;
  - 2. Terminate the contract;
  - 3. Amend the solicitation;
  - 4. Issue a new solicitation;
  - 5. Award a contract consistent with procurement statutes and regulations; or
  - 6. Render such other relief as determined necessary to ensure compliance with procurement statutes and regulations.

**R19-3-555. Agency Report**

- A.** The procurement officer shall file a complete report on any appeal under A.R.S. Title 41, Chapter 6, Article 10 within 14 days after the date the appeal is filed, at the same time furnishing a copy of the report to the interested party. The procurement officer shall also provide a copy of the report to any interested parties who request a copy, at their cost. The report shall contain copies of:
  - 1. The appeal;
  - 2. The offer submitted by the interested party;
  - 3. The offer of the firm that is being considered for award;
  - 4. The solicitation, including the specifications or portions relevant to the appeal;
  - 5. The abstract of offers or relevant portions;
  - 6. Any other documents that are relevant to the protest; and
  - 7. A statement by the procurement officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.
- B.** The time limit for filing the agency report under subsection (A) may be extended for good cause by a written determination. The extension shall not exceed an additional 30 days. The procurement officer shall notify the interested party in writing that the time for the issuance of the agency report has been extended and the date by which a decision shall be issued.
- C.** The interested party shall file comments on the agency report with the procurement officer within 10 days after receipt of the report. The interested party shall provide copies of the comments to the other interested parties.
- D.** The interested party may submit a written request to the Director for an extension of the period for submission of comments, identifying the reasons for the extension. The procurement officer shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of filing comments.

**R19-3-556. Controversies Involving Contract Claims Against the Lottery**

- A.** A claimant shall file a contract claim with the procurement officer within 180 days after the claim arises. The claim shall include the following:
1. The name, address, and telephone number of the claimant;
  2. The signature of the claimant or claimant's representative;
  3. Identification of the solicitation or contract number;
  4. A detailed statement of the legal and factual grounds of the claim including copies of the relevant documents; and
  5. The form and dollar amount of the relief requested.
- B.** The procurement officer shall have the authority to settle and resolve contract claims.

**R19-3-557. Procurement Officer's Decision**

- A.** If a claim cannot be resolved under R19-3-556, the procurement officer shall, upon a written request by the claimant for a final decision, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the procurement officer shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.
- B.** The procurement officer shall furnish the decision to the claimant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the Director. The decision shall include:
1. A description of the claim;
  2. A reference to the pertinent contract provision;
  3. A statement of the factual areas of agreement or disagreement;
  4. A statement of the procurement officer's decision, with supporting rationale;
  5. A paragraph which substantially states: "This is the final decision of the procurement officer. This decision may be appealed as an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10 within 30 days from receipt of the decision. If you appeal, you must file a written notice of appeal containing the information required in R19-3-559(B) with the procurement officer within 30 days from the date you receive this decision."

**R19-3-558. Issuance of a Timely Decision**

If the procurement officer fails to issue a decision within 60 days after the request is filed, the claimant may proceed as if the procurement officer had issued an adverse decision.

**R19-3-559. Appeals and Reports to the Director**

- A.** The claimant may appeal the final decision of the procurement officer to the Director within 30 days from the date the decision is received. The claimant shall file a copy of the appeal with the Director and the procurement officer.
- B.** The claimant shall file the appeal in writing and shall include the following:
1. A copy of the decision of the procurement officer;
  2. A statement of the factual areas of agreement or disagreement; and
  3. The precise factual or legal error in the decision of the procurement officer from which an appeal is taken.
- C.** The procurement officer shall file a complete report on the appeal with the Director within 14 days from the date the appeal is filed, providing a copy to the claimant at that time by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The report shall include a copy of the claim, a copy of the procurement officer's decision, if applicable, and any other documents that are relevant to the claim.
- D.** The Director shall resolve appeals on claim decisions under A.R.S. § 41-1092.07.

**R19-3-560. Controversies Involving Lottery Claims Against the Contractor**

If the procurement officer is unable to resolve, by mutual agreement, a claim asserted by the Lottery against a contractor, the procurement officer shall seek resolution under A.R.S. § 41-1092.07. The procurement officer shall furnish a copy of the claim to the Director.

**R19-3-561. Online Solicitation Process**

The procurement officer may make a written determination that an online bidding as defined in A.R.S. § 41-2671 is most advantageous to the Lottery. The written determination shall include the following information:

1. An estimate of the number of prospective offerors;
2. A description of the proposed online procurement method to be utilized and an explanation of how this method will foster competition;
3. An explanation of why the proposed procurement method is advantageous to the Lottery; and
4. The scope, duration, and estimated total dollar value of the procurement need.

**R19-3-562. Guidance**

If a procedure is not provided by these rules, the procurement officer may issue a written determination using for guidance A.R.S. § 41-2501 through § 41-2591 or A.A.C. R2-7-101 through R2-7-1301.